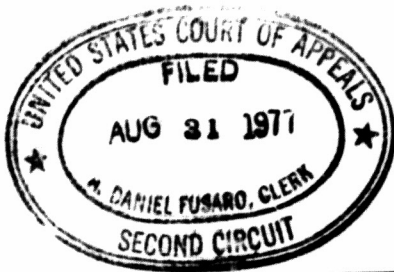


***United States Court of Appeals
for the Second Circuit***



APPENDIX



ORIGINAL

76-7412

United States Court of Appeals
For the Second Circuit

SPRAGUE & RHODES COMMODITY CORPORATION,
Petitioner-Appellant,
against

INSTITUTO MEXICANO DEL CAFE,
Respondent-Appellee.

On Appeal from the United States District Court
for the Southern District of New York

JOINT APPENDIX

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
Attorneys for Petitioner-Appellant
40 West 57th Street
New York, New York 10019
(212) 977-9700

SILBERFELD, DANZIGER & BANGSER
Attorneys for Respondent-Appellee
230 Park Avenue
New York, New York 10017
(212) 867-6500

PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

July 14, 1976	Filed Petition to compel arbitration.
July 19, 1976	Filed Petitioners Affidavit & Order to show cause why an order should not be made herein pursuant to 9 U.S.C., directing that arbitration proceed between the parties.
July 19, 1976	Filed memorandum of law in support of petition to compel arbitration.
July 27, 1976	Filed stipulation and order that the hearing on this Court's order to show cause is adjourned to August 11, 1976.
August 9, 1976	Filed Respondent's affidavit in opposition to petition and motion to compel arbitration.
August 9, 1976	Filed Respondent's memorandum of law in opposition to petition and motion to compel arbitration.
August 9, 1976	Filed ANSWER.
Sept. 21, 1976	Filed petitioner's reply memo on law in support of petition and motion.
Sept. 21, 1976	Filed affidavit of Donald Sperling in support of petition and motion.
Sept. 21, 1976	Filed affidavit of Leonard S. Baum in support of petition and motion.
Sept. 21, 1976	Filed respondent's rebuttal memo on opposition to the petition and motion.
August 17, 1976	Filed Memo. End. on Order to Show Cause document #2. Petition for Order Pur. to 9 U.S.C. §4 & for an order pur. to Rule 60(b) FRCP is denied in all respects
August 23, 1976	Filed Notice that petitioner Sprague & Rhodes hereby appeals to the U.S.C.A.P. from the endorsement of Pierce, J.

A 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SPRAGUE & RHODES COMMODITY CORP.,	:	Civil Action
	:	File No.: 76 C.V. 3128
Petitioner,	:	(L.W.P.)
-against-	:	PETITION TO COMPEL
	:	<u>ARBITRATION</u>
INSTITUTO MEXICANO DEL CAFE,	:	
Respondent.	:	

-----X

Petitioner, Sprague & Rhodes Commodity Corp. ("S&R"),
by its attorneys, Phillips, Nizer, Benjamin, Krim & Ballon,
respectfully allege as follows:

1. This Petition to Compel Arbitration is made pursuant to Section 4 of the United States Arbitration Act, 9 U.S.C. §4. S&R's Motion to Vacate; nunc pro tunc this Court's Order Granting Effect to Letters Rogatory dated April 26, 1976 (filed May 13, 1976) and stay Instituto from prosecuting any proceedings taking effect from service of such Letters Rogatory is made pursuant to Fed. R. Civ. P. 60(b) and 9 U.S.C. §4.

2. The jurisdiction of this Court is based upon the provisions of the United States Arbitration Act, 9 U.S.C. §4, and the diverse citizenship of the parties, 28 U.S.C. §1332. The matter in controversy exceeds the sum of \$10,000 exclusive of interest and costs.

3. Petitioner S&R is and was at all times relevant hereto a corporation organized and existing under the laws of the State of New York. Its principal place of business is in the Southern District of New York.

A 2

4. Respondent Instituto Mexicano Del Cafe ("Instituto") is and was at all times relevant hereto a public institution created by the government of Mexico and has its principal place of business in Mexico. Instituto transacts business in the Southern District of New York and maintains an office at 3 West 57th Street, New York, New York under the name of the Mexican Coffee Institute.

5. On or about August 6, 1975, S&R and Instituto entered into an agreement in writing for the sale by Instituto of 1,000 bags of coffee to S&R. A copy of that agreement is annexed as Exhibit 9 to the Affidavit of Jack Bloom submitted herewith.

6. The agreement contains the following clause relating to arbitration:

"Arbitration: All controversies relating to, in connection with, or arising out of this contract, its modification, making or the authority or obligations of the signatories hereto, and whether involving the principals, agents, brokers, or others who actually subscribe hereto, shall be settled by arbitration in accordance with the 'Rules of Arbitration' of the Green Coffee Association of New York City, Inc., as they exist at the time of the arbitration (including provisions as to payment of fees and expenses). Arbitration is the sole remedy hereunder, and it shall be held in accordance with the law of New York State, and judgment of any award may be entered in the courts of that State, or in any other court of competent jurisdiction. All notices or judicial service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforesaid rules."

7. Instituto has claimed that on or about July 29, 1975, S&R and Instituto entered into an agreement in writing for the sale by Instituto of 3,000 bags of coffee to S&R. That alleged

A 3

agreement is annexed as Exhibit 8 to the Affidavit of Jack Bloom submitted herewith. S&R denies that such an agreement was entered into but admits that the alleged agreement contains the same clause providing for arbitration quoted in paragraph 6 of this Petition.

8. Instituto has claimed that on or about August 12, 1975, S&R and Instituto entered into an agreement to be confirmed in writing for the sale by Instituto of an additional 3,000 bags of coffee to S&R. S&R denies that such an agreement was entered into but admits that the alleged agreement would contain the same clause providing for arbitration quoted in paragraph 6 of this Petition.

9. Additionally, every previous agreement ever entered into between S&R and Instituto was in writing and contained the same clause providing for arbitration quoted in paragraph 6 of this Petition. These agreements are dated December, 1970, January 7, 1971, January 8, 1971 (two agreements), January 14, 1971 (two agreements), February 18, 1971 and March 1, 1971 (the agreement of March 1, 1971 is annexed by way of example as Exhibit 6 to the Affidavit of Jack Bloom submitted herewith).

10. Additionally, on information and belief, every agreement between Instituto and the members of the Green Coffee Association of New York City, Inc. (which includes the largest importers of coffee in the United States) covering Instituto's sale of many thousands of bags of green coffee was and is made in writing on the F.O.B. contract of the Green Coffee Association of New York City, Inc. which contains the same clause providing

A 4

for arbitration quoted in paragraph 6 of this Petition.

11. Each and every agreement mentioned in paragraphs 5 through 10 of this Petition was a contract providing for commerce among the States as set forth in 9 U.S.C. §1 and 3 and is governed by the provision of Title 9 of the United States Code.

12. There are disputes of fact and arbitrable matters arising out of and relating to the alleged making of and claimed breaches of the agreements referred to in paragraphs 5, 7 and 8 of this Petition. The arbitration clause in each of these (and any other relevant) agreements provides that the sole remedy for the settlement of all controversies arising out of or in connection with the making or performance of the agreement, including the authority of principals, agents and brokers, shall be by arbitration in accordance with the "Rules of Arbitration" of and before the Green Coffee Association of New York City, Inc.

13. Respondent Instituto has failed to take its dispute with S&R concerning the alleged making of and claimed breaches of such agreements to arbitration and instead, in violation of its undertaking to arbitrate, has commenced a lawsuit against S&R in the Superior Court of Mexico. Its intent to proceed with such action against S&R is evidenced by its ex parte application to this Court for an Order Granting Effect to Letters Rogatory for the service of process in such Mexican lawsuit on S&R. Such Order was granted on April 26, 1976 (filed May 13, 1976) and is annexed as Exhibit 1 to the Affidavit of Jack Bloom submitted herewith.

14. The parties' agreement to submit all controversies

A 5

relating to, in connection with, or arising out of the making, modification or performance of the agreements referred to above, is not in issue and the validity and legality of such agreement to arbitrate all such controversies is beyond question.

15. No previous application has been made for the Order or relief sought herein.

WHEREFORE, Petitioner S&R prays that this Court make and enter the Order annexed hereto directing that arbitration between the parties proceed in accordance with the "Rules of Arbitration" of and before the Green Coffee Association of New York City, Inc. and that the issues raised by the complaint of Instituto in the Superior Court of Mexico be determined by arbitration in accordance with the agreement of the parties, vacating nunc pro tunc this Court's Order dated April 26, 1976 (filed May 13, 1976) Granting Effect to Letters Rogatory and staying Instituto from prosecuting any and all proceedings taking effect from service of such Letters, together with the costs and disbursements of this application, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 14, 1976

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON

By: Leonard A. Baumgardner
Attorneys for Petitioner
Sprague & Rhodes Commodity Corp.
40 West 57th Street
New York, New York 10019
(212) 977-9700

A b

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SPRAGUE & RHODES COMMODITY : 76 Civ. 3128
CORPORATION, : (LWP)
:
Petitioner, :
:
-against- : ANSWER
:
INSTITUTO MEXICANO DEL CAFE, :
:
Respondent. :
----- x

Respondent Instituto Mexicano del Cafe
("Instituto"), by its attorneys, Silberfeld, Danziger &
Bangser, for its answer to the petition, respectfully
alleges as follows:

1. Denies knowledge or information sufficient
to form a belief as to each and every allegation con-
tained in paragraph 1 of the petition.

2. Admits that the matter in controversy
exceeds the sum of \$10,000, exclusive of interest and
costs, as alleged in paragraph 2 of the petition; but
except as so specifically admitted, denies each and
every allegation contained in said paragraph.

3. Denies knowledge or information sufficient
to form a belief as to each and every allegation con-
tained in paragraph 3 of the petition.

4. Admits the allegations contained in para-
graph 4 of the petition.

A 7

5. Denies each and every allegation contained in paragraph 5 of the petition.

6. Denies each and every allegation contained in paragraph 6 of the petition.

7. Admits that on or about July 29, 1975 petitioner and respondent entered into an agreement for the sale by respondent of 3,000 bags of coffee to petitioner; but except as so specifically admitted, denies each and every allegation contained in paragraph 7 of the petition.

8. Admits that respondent has claimed that on or about August 12, 1975 petitioner and respondent entered into an agreement for the sale by respondent to petitioner of an additional 3,000 bags of coffee, as alleged in paragraph 8 of the petition, and affirmatively avers that such agreement was in fact orally made and never confirmed in writing; but, except as so specifically admitted, denies each and every allegation contained in said paragraph.

9. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 9 of the petition.

10. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 10 of the petition.

A 8

11. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 11 of the petition.

12. Admits that there are disputes of fact arising out of the multiple breaches of the agreements between petitioner and respondent for the sale of 6,000 bags of coffee as aforesaid, as alleged in paragraph 12 of the petition; but except as so specifically admitted, denies each and every allegation contained in said paragraph; and affirmatively avers that there are no disputes of fact relating to the alleged making of said agreements.

13. Admits that respondent has commenced a lawsuit against petitioner in the Twenty-Eight Civil Court of the Superior Court of the Federal District of Mexico (the "Mexican court"), and that respondent intends to proceed with such action against petitioner (subject to its stipulation with petitioner respecting the instant proceeding), and further admits that it caused an ex parte application to be made to this court for an order granting effect to Letters Rogatory, and that such order was granted on April 26, 1976 (filed May 13, 1976), all as alleged in paragraph 13 of the petition; but except as so specifically admitted, denies each and every allegation contained in said paragraph.

14. Denies each and every allegation contained

A 9

in paragraph 14 of the petition.

15. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 15 of the petition.

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

16. The petition fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

17. This court lacks jurisdiction over the subject matter of the petition.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

18. No written arbitration agreement existed or exists between petitioner and respondent with respect to the transactions in question.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

19. On or about June 3, 1976, petitioner entered a special appearance in the Mexican court through its counsel, in the pending litigation between the parties hereto. In such special appearance, petitioner there requested that the court dismiss that litigation by reason of defective jurisdiction.

A 10

20. Mexican law permits the existence of an arbitration agreement, and the right to compel arbitration, to be raised through such special appearance.

21. The said petition of petitioner in the Mexican court litigation has been dismissed.

22. By reason thereof, petitioner has waived its right to raise herein, and is herein estopped from raising, any request that arbitration be compelled or that the jurisdiction of the Mexican court action be interfered with.

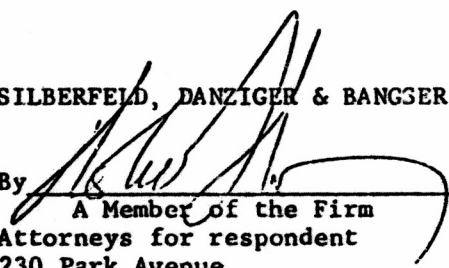
AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE

23. This court is an inconvenient forum for consideration of the issues presented.

WHEREFORE, respondent requests judgment dismissing the petition and an order denying the relief sought in this proceeding.

Dated: New York, New York
August 5, 1976

SILBERFELD, DANZIGER & BANGSER

By 
A Member of the Firm
Attorneys for respondent
230 Park Avenue
New York, New York 10017
(212) 889-8400

To:
PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON, ESQS.
40 West 57th Street
New York, New York 10019
(212) 977-9700

A 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SPRAGUE & RHODES COMMODITY CORP.,	:	Civil Action
	:	File No.: 76 CIV. 3128
Petitioner,	:	(L.U.P.)
-against-	:	
INSTITUTO MEXICANO DEL CAFE,	:	ORDER TO SHOW
	:	<u>CAUSE</u>
Respondent.	:	

-----X

Upon the annexed Petition of Sprague & Rhodes Commodity Corp. To Compel Arbitration and Motion To Vacate Order Granting Effect to Letters Rogatory, and the supporting affidavit of Jack Bloom, sworn to the 14th day of July, 1976 and the exhibits thereto, it is

ORDERED that the Respondent Instituto Mexicano Del Cafe show cause before this Court on July 20, 1976 in Room 506 of the United States Courthouse, Foley Square, New York, N. Y., at 10:30 Am., or as soon thereafter as counsel can be heard, why the annexed Order pursuant to 9 U.S.C. §4 and Fed. R. Civ. P. 60(b) should not be made herein:

15/R.J.W.

1. directing that arbitration proceed between the parties before the Green Coffee Association of New York City, Inc.;
2. vacating this Court's Order Granting Effect to Letters Rogatory dated April 26, 1976 (filed May 13, 1976) nunc pro tunc and granting a stay against Instituto from prosecuting any proceedings or entering or enforcing any judgment based upon service of such Letters Rogatory; and

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3. granting such other and further relief as this Court may deem just and proper.

IT IS FURTHER ORDERED, that personal service of this Order to Show Cause and the annexed petition and moving papers on defendant at the Mexican Coffee Institute, 3 West 57th Street, New York, N. Y. and on the attorneys that applied for the Order Granting Effect to Letters Rogatory, Silberfeld, Danziger & Bangser, on or before July 16, 1976 by Neon ~~Mr~~ shall be sufficient.

1/ R. I. W.

/s/ Robert E. Ward
U.S.D.J.

Dated: New York, New York
July 15, 1976

A 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
SPRAGUE & RHODES COMMODITY CORP., : Civil Action
: File No.
:
Petitioner, : AFFIDAVIT IN SUPPORT OF
: SPRAGUE & RHODES PETITION
- against - : TO COMPEL ARBITRATION AND
: MOTION TO VACATE ORDER
INSTITUTO MEXICANO DEL CAFE, : GRANTING EFFECT TO LETTERS
: ROGATORY
Respondent. :
:
-----X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JACK BLOOM being duly sworn deposes and says:

1. I am a Vice President of Sprague & Rhodes Commodity Corp. ("S & R") and am completely familiar with the facts of this matter. I submit this affidavit in support of S & R's petition, pursuant to 9 U.S.C. § 4, to compel arbitration of a dispute between S & R and respondent Instituto Mexicano Del Cafe ("Instituto"). This affidavit also is submitted in support of S & R's motion, pursuant to F.R. Civ. P. 60(b) and 9 U.S.C. § 4, to vacate, nunc pro tunc, this Court's Order Granting Effect to Letters Rogatory (obtained ex parte) and to stay Instituto from prosecuting any action or enforcing any judgment against S & R taking effect from service of such Letters Rogatory.
2. No prior request has been made for the relief sought in S & R's petition and motion. It is made by Order to Show Cause for the reasons set forth below in paragraphs 5-7.
3. S & R is a long-established importer of coffee with

A 14

its office in New York City. It buys coffee from many nations around the world, including Mexico. Instituto is a "Public Institution of the Mexican Government"* which both performs governmental functions with respect to the export of coffee from Mexico and also acts as a private business that sells coffee. Armando Guzman Villanueva ("Guzman") is an independent businessman in Mexico who acts as a broker for both sellers and buyers of coffee. Guzman also owns two Mexican companies that sell coffee in their own right. One of these companies also acts as a broker.

The Underlying Dispute Between
the Parties and the Question
Presented in this Proceeding

4. The underlying dispute herein involves Instituto's claim that it sold 6,000 bags of coffee to S & R through Guzman as S & R's representative and that S & R has refused to pay \$606,948 as the alleged balance of the purchase price. S & R contends that it purchased only 1,000 bags of coffee from Instituto for which it paid \$120,933, that it made this purchase with the assistance of Guzman who had only limited authority, and that it purchased the additional 5,000 bags of coffee from two other companies which have been paid in full. Liability may well turn upon a determination of who shall bear the alleged loss apparently caused by fraudulent acts perpetrated by Guzman upon both Instituto and S & R. There also is a question as to whether any loss actually was suffered. Instituto itself has given S & R

*Instituto has been characterized as such by its general counsel, Hector Garza Rodriguez.

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copies of Instituto's own records which reveal payment for at least half, if not all, of the monies allegedly owing by S & R.

5. The immediate question for this Court is whether S & R is entitled to arbitration of its dispute with Instituto before the Green Coffee Association of New York City, Inc. (the "Green Coffee Association") as required by written contract (as well as course of dealing and trade custom) or whether S & R will be forced to suffer a default judgment in a suit Instituto has commenced improperly in Mexico and then be put to the overwhelming burden of defending enforcement actions throughout the United States and abroad.

6. The status of the dispute is as follows: This Court issued an order dated April 26, 1976 (filed May 13, 1976) granting effect to Letters Rogatory issued by the Superior Court of Mexico, thereby enabling S & R to be served with a document that appears to be a complaint. The Order is annexed hereto as Exhibit 1. The "complaint", a copy of which is annexed hereto as Exhibit 2, was served on S & R on May 18, 1976.

7. S & R has been advised that service of this "complaint" commenced an action against it in the Superior Court of Mexico and that an appearance was required sometime late in June of 1976. Later in this affidavit I will set forth in detail the reasons why S & R could not and did not appear in this Mexican action as well as the relevance of that decision. At present, the status of this Mexican lawsuit is unknown. S & R believes that Instituto will seek to obtain a default judgment in Mexico and

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thereafter will seek to enforce that judgment in New York and other jurisdictions throughout the United States and abroad. Such steps by Instituto could cause substantial, irreparable and measureless damage to S & R's business and reputation; much of S & R's business depends on its reputation for integrity and prompt payment. Such steps also would cause S & R to incur enormous and unjustified risks, costs and expenses in defending against multiple enforcement of an improperly obtained default judgment. Although S & R maintains its sole office in New York, the nature of its business is such that it often has valuable contract rights and account receivables throughout the United States and abroad. Instituto may well seek to execute on such assets. This would expose S & R to risks created by the vagaries of foreign judgment enforcement laws in numerous states and foreign countries. In addition to the risk of loss, S & R would be compelled to retain and communicate with new counsel in each such jurisdiction, an expensive and difficult task. Such a result manifestly is unfair where every contract and dealing between S & R and Instituto establishes their intent to arbitrate disputes in New York City. As the facts set forth below will demonstrate, Instituto should be compelled to arbitrate its dispute with S & R. This Court also should vacate its Order granting effect to Instituto's Letters Rogatory so as to prevent Instituto from using this Court to force S & R to unnecessary and destructive litigation.

The Facts

The Green Coffee Association and its Contract.

8. S & R is a coffee importer with its sole place of business in New York City. It or affiliated corporations have been engaged in this business for over 70 years, importing coffee from over 35 countries throughout the world. It is a member of the Green Coffee Association, a trade association constituted of the leading American coffee importers. S & R executes all of its contracts for the purchase of green coffee from coffee producers on the F.O.B. contracts of the Green Coffee Association. A copy of this contract, in effect since 1968, is annexed hereto as Exhibit 3.* Invariably S & R insists upon arbitration under the rules of the Green Coffee Association as part of any contract it may execute.

9. The Green Coffee Association is located at 182 Front Street in New York City and has 108 members active in the importation of coffee from foreign countries as well as about 70 associate members such as insurance companies, banks and shippers. I am informed and believe that virtually without exception those members order green coffee on the Green Coffee Association contract. In 1975 alone at least 16 members of the Association ordered green coffee from Mexico for shipment to Atlantic Coast ports. Additional orders were placed for delivery at Gulf and Pacific Coast ports and to Laredo, Texas. I believe that a number of these orders must have been placed with Instituto which must have acceded to the terms of the Green Coffee Association contract. Annexed hereto as Exhibit 4 is an excerpt from a summary of

*In a very few instances S & R also may use the EX DOCK form contract of the Green Coffee Association, usually on purchases from non-producers. That form also contains an arbitration clause.

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coffee imports at Atlantic Coast ports prepared by the Green Coffee Association for the year ending December 31, 1975; it only refers to the 37 largest importers. Based on reports prepared by International Limited (a company that regularly issues such reports to the trade), I am informed and believe that at the very least the following importers - all members of the Green Coffee Association and among the largest United States importers of coffee - have purchased coffee from Instituto:

J. Aron & Co., Inc.
A.C. & Leon Israel Coffee Co.
Volkart Bros., Inc.
Machado & Co., Inc.
Imperial Commodities Corp.
Anderson, Clayton & Co., Inc.
Cofinco, Inc.
Carl Borchsenius Co., Inc.

This list is by no means exclusive and represents only those companies known to have imported coffee from Instituto within the past year and one-half. I believe that every single transaction between those importers and Instituto (covering, in total, many thousands of bags of coffee) was confirmed by a written Green Coffee Association contract.

10. The standard Green Coffee Association contract contains three provisions of particular relevance to the instant case:

a. Advice of Shipment: Telegraphic advice of shipment with name of vessel in which coffee is on-board, together with the quantity, description and port of destination, must be transmitted direct, or through Seller's Agent/Broker to the buyer as soon as known, but not later than the day of arrival of vessel at destination stated on contract.

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b. Rulings: The 'Ruling on Coffee Contracts' of the Green Coffee Association of New York City, Inc., in effect on the date this contract is made, are incorporated as part of this agreement "

c. Arbitration: All controversies relating to, in connection with, or arising out of this contract, its modification, making or the authority or obligations of the signatories hereto, and whether involving the principals, agents, brokers, or others who actually subscribe hereto, shall be settled by arbitration in accordance with the 'Rules of Arbitration' of the Green Coffee Association of New York City, Inc., as they exist at the time of the arbitration (including provisions as to payment of fees and expenses). Arbitration is the sole remedy hereunder, and it shall be held in accordance with the law of New York State, and judgment of any award may be entered in the courts of that State, or in any other court of competent jurisdiction. All notices or judicial service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforesaid rules.

This last term is the broadest arbitration clause possible, providing for arbitration to resolve controversies concerning the making of, as well as the disputes arising under, the contract.

In arbitrating the making of the contract, the arbitrators specifically are authorized to determine the authority of the parties to the contract whether principals, agents or brokers.

Guzman and Instituto.

11. In about 1973 Guzman offered S & R his services to find and present opportunities for the purchase of coffee in Mexico. The customary procedure that evolved was for Guzman to advise S & R that a given quantity of coffee was available from a particular producer (or shipper) at a given price. If S & R was interested in acquiring coffee at that time it would communicate

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an offer to purchase through Guzman. The offer frequently varied from the terms proposed by Guzman in that S & R's offer would be for a lower price than that quoted by Guzman. In every single instance S & R confirmed its offer by a written Green Coffee Association contract sent to Guzman for delivery to the seller. Subsequently the seller would ship the coffee specified by the contract and, in the case of Mexican shipments arriving in Laredo, Texas, S & R promptly would pay for the coffee upon its receipt (or upon receipt of appropriate shipping documents).

12. In addition to his activities as a middleman, Guzman owns two companies, CIA. Mexicana de Representaciones A.G., S.A. ("Mexicana") and Cafes de la Frontera ("Frontera"). These companies acquire and sell coffee for their own accounts. Mexicana also acts as a representative or broker for a number of sellers and/or buyers of coffee.

13. I am informed and believe that Instituto is a part of the Mexican Government, a "Public Institution" created by the Mexican Government to perform governmental as well as private merchantile functions. It fixes the minimum export price for Mexican coffee and sets quotas governing the quantities of coffee that may be exported from Mexico during given periods. Instituto "stamps" every certificate of origin for all coffee exported from Mexico regardless of the exporter or shipper. Instituto also acts as a private business concern by selling coffee for its own account. Sales are made to foreign importers such as S & R both directly and through the "representatives" of such importers in

A 21

Mexico. Sales also are made to Mexican purchasers for resale both within Mexico and abroad. It is significant that various Mexican shippers may agree to sell coffee to importers in the United States and, thereafter, purchase that coffee from Instituto. The coffee itself never changes hands in Mexico and Instituto (not the seller) could make delivery of the coffee to a customs broker and warehouse in the United States. This is because the green coffee itself is not placed in bags and readied for transport until a few days prior to the actual shipment. The coffee then is bagged at the growing area and put in transit to the ultimate purchaser.

14. Instituto maintains an office at 3 West 57th Street in New York City under the name Mexican Coffee Institute and its U.S. International Representative, Rodolfo Gaitan-Rojo, and its U.S. Administrative Officer, Jesus Rodriguez, are, among others, located at this office. Copies of their business cards are annexed hereto as Exhibit 5.

15. Documents furnished to S & R by both Instituto and Guzman indicate that Instituto sold coffee on open account to Guzman and to both of his companies, Mexicana and Frontera. S & R was not involved in those sales which, by Instituto's own admission, amounted to hundreds of thousands of dollars.

16. Several years before S & R had any relationship with Guzman it made direct purchases from Instituto. In 1970 and 1971 S & R entered into at least 8 contracts directly with Instituto (then called Beneficios Mexicana de Cafe) for the

A 22

purchase of coffee.* Every single contract was written on a Green Coffee Association contract. As an example, contract No. 1006 dated March 1, 1971 is annexed hereto as Exhibit 6. Significantly, each contract required immediate payment against the seller's draft accompanied by bills of lading and invoices. Such a provision, virtually standard in the coffee trade, is included to protect the seller by requiring payment before the seller parts with possession (represented by the bills of lading) of the coffee. From the buyer's point of view, the bills of lading represent written confirmation by the shipper that the coffee is on board the vessel or truck, as the case may be. Of course, since the buyer prefers actual possession of the coffee prior to payment rather than mere possession of a document which entitles the buyer to obtain possession, the contract term providing for immediate payment against seller's draft with bills of lading and invoices is designed to protect the seller rather than the buyer.

17. On or about July 15, 1975 S & R agreed to purchase 2,000 bags of Mexican coffee from Manuel Penagos Lara ("Penagos") at 50 1/2¢ per lb. for delivery at Laredo, Texas in August. The Green Coffee Association contract confirming this agreement was sent to Guzman, through whom S & R had made its offer to purchase. A copy of that contract is annexed hereto as Exhibit 7.

*These contracts were dated December, 1970; January 7, 1971; January 8, 1971 (2 contracts); January 14, 1971 (2 contracts); February 18, 1971 and March 1, 1971. Each of these contained the salient arbitration provision.

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18. On July 17, 1975 a frost occurred in Brazil. This immediately caused a sharp rise in the price of coffee from all countries, including Mexico. These changed conditions in the world coffee market apparently threw the operations of Instituto into confusion. In the resulting chaos, Instituto deviated from its standard procedures and such deviations enabled the current problem to occur. Instituto's deviations in procedure are discussed, infra, at paragraph 28 of this affidavit.

19. On July 31, 1975 S & R received two telexes from Guzman. The first telex advised that Mexican coffee export taxes had risen sharply; that Mexico was "pretending" to close the border on exports to the United States; that the minimum [government regulated] export price had risen; and that S & R should send four contracts for a total of 9,000 bags for registration purposes. As Guzman had explained, the Mexican Government, through Instituto, established quotas on the amount of coffee that could be exported during various periods; thus, explained Guzman, it was necessary for S & R to send contracts solely for registration with Instituto to assure S & R the ability to obtain future shipments of coffee within the current period. Guzman also requested that S & R send a telex to Instituto confirming that Guzman was S & R's "representative". He asked that this telex refer to one of the contracts intended for registration purposes only - a contract for 3,000 bags designating Instituto as seller.

20. On the same day, July 31, 1975, in response to Guzman's requests, S & R dispatched two written communications -

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the telex to Instituto and a letter to Guzman accompanied by the four registration contracts.

21. The S & R telex to Instituto read as follows:

"This is to confirm that Armando Guzman is our representative in Mexico and is also authorized to pass offers at our name when instructed by us. We are also sending contract 5437-F covering 3,000 bags Mex/OW at 80.00 dills fob Laredo. The complete details should be given by our representative and on the contract" (emphasis added).

I specifically added the words "when instructed by us" to the language proposed by Guzman to make it clear that Guzman possessed very limited authority. Guzman only was authorized to pass offers which, by universal trade practice, had to be confirmed in written contracts signed by S & R. Those contracts always contained the "complete details" of each transaction, including a clause providing for arbitration. A copy of Contract No. 5437-F referred to in the above telex is annexed hereto as Exhibit 8. Significantly, this contract is the Green Coffee Association contract that contains the all-inclusive arbitration clause quoted above.

22. The letter to Guzman from S & R enclosed the four registration contracts he had requested (including contract 5437-F) and explicitly stated that "It is understood that these contracts are for Registration purposes."

23. On or shortly before August 6, 1975 S & R authorized Guzman to transmit to Instituto S & R's offer to purchase 1,000 bags from Instituto at 79 1/2¢ a pound. In accordance with the standard practices of both S & R and Instituto, S & R sent a

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signed Green Coffee Association contract confirming its order. A copy of that contract (No. 5481) is annexed hereto as Exhibit 9. It of course contains the same all-encompassing arbitration clause. Guzman informed S & R that this offer was accepted by Instituto and Instituto has retained the \$120,933 remitted by S & R in payment for the coffee shipped pursuant to this contract.

24. In mid-August of 1975 Guzman agreed that his own company, Frontera, as principal, would sell S & R 3,000 bags of coffee at 78¢ a pound. This agreement was confirmed by two written Green Coffee Association contracts sent by S & R to Frontera, copies of which are annexed hereto as Exhibits 10 and 11.

25. Thus, between mid-July and mid-August of 1975, S & R purchased 6,000 bags of coffee for prompt shipment to Laredo, Texas: 2,000 bags from Penagos; 1,000 bags from Instituto, and 3,000 bags from Frontera.

26. On August 20, 1975 S & R received a telex from its customs broker in Laredo advising that 6,000 bags of coffee had cleared customs and were located at Gilbert International's warehouse in Laredo. On August 21 the warehouse confirmed its possession of the 6,000 bags. On the basis of these advices, and as required under its contracts, S & R made the following payments by cable transfer to each company's bank account:

a. To Penagos, on August 22, 1975:

\$153,638 for 2,000 bags

b. To Instituto, on August 22, 1975:

\$120,933 for 1,000 bags

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c. To Frontera, on August 26, 1975:

\$339,954 for 3,000 bags

This represents a total purchase price of \$614,525 for 6,000 bags of coffee.

27. S & R received its first communication from Instituto in September of 1975. On or shortly before September 10, 1975 Instituto presented a draft for \$606,948 to S & R's bank. S & R subsequently learned that this draft and the attachments thereto represented a claim by Instituto that it was owed \$606,948 as the balance due on 6,000 bags of coffee allegedly sold and delivered to S & R by Instituto. The amount of the draft was based upon a total alleged sales price of \$727,881 less the acknowledged remittance of \$120,933 made by S & R on August 22, 1975. Of course, S & R made this remittance as payment for 1,000 bags covered by contract No. 5481 dated August 6, 1975.

28. Although the coffee had been delivered 3 weeks earlier, the presentation of Instituto's draft represented the first evidence of any notification by Instituto to S & R claiming that it was the supplier of the entire 6,000 bags. Prior thereto Instituto never had advised S & R of any shipment or delivery notwithstanding the requirement contained in the Green Coffee Association contract that the seller must give telegraphic advice to the buyer, not later than the arrival date, of "the shipment with name of vessel in which coffee is on board, together with the quantity, description, and port of destination." Also every one of the contracts used by S & R and relevant to the coffee

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in issue specified payment not later than upon presentation of a sight draft to be accompanied by bills of lading and invoices.* Instituto never presented any draft, bills of lading or invoices to S & R until long after actual delivery was made and S & R had remitted the purchase price to other parties. Had Instituto complied with any of these standard terms, with all of which it fully aware, S & R would have been alerted to Instituto's claim for payment and would not have made remittances to any other party pending clarification of the situation. Thus, any loss Instituto may have suffered is attributable to its own negligence.

29. On September 11, 1975 S & R rejected Instituto's draft, advising that it had promptly paid for the 1,000 bags purchased from Instituto and that the remaining 5,000 bags had been purchased from Penagos and Frontera, both of which had been paid in full. Months of oral and written communications among Instituto, Guzman and S & R have followed, during which time the positions of Instituto and S & R have become clear.

Instituto's Claim.

30. Instituto's claim is summarized in a written memorandum dated November 20, 1975 delivered to S & R by Instituto's general counsel, Mr. Garza, and also in its "complaint". The memorandum and "complaint" states that on July 29, 1975 Guzman represented himself to be S & R's agent authorized to purchase

*Again, this provision protects the seller by assuring payment before the buyer obtains possession of the coffee. The buyer, of course, is satisfied by possession.

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3,000 bags of coffee at 80¢ per pound; that on July 31, 1975 Instituto received S & R's telex confirming such authority and referring to Contract No. 5437-F for 3,000 bags at 80¢; that on August 12, 1975 Guzman told Instituto that he was authorized to purchase an additional 3,000 bags for immediate delivery to S & R and that S & R was sending a contract for the second 3,000 bags as well; and that in reliance upon these representations, Instituto exported a total of 6,000 bags to S & R for which Instituto is entitled to payment.

31. This memorandum stresses Instituto's reliance upon written contracts that Guzman promised for each 3,000 bag order, a fact which is confirmed by an October 6, 1975 telex to S & R from Instituto stating that Instituto has a standard requirement that every transaction be covered by a written contract.* Instituto's Claim Already May Have Been Completely Satisfied.

32. It is worth pausing to note the facts which undercut any claim of loss on the part of Instituto; these facts, as well as Instituto's subsequent response to S & R's good faith effort to resolve the dispute, reveal a course of conduct by

*As in the case of all written contracts with S & R, the contract provides for arbitration. The October 6 telex also confirms two other standard requirements of Instituto which it ignored here: (1) immediate payment by buyer against presentation of shipping documents and (2) no payments through representatives in Mexico without prior approval by the Mexican Treasury Department. In this case Instituto never demanded payment against shipping documents and, indeed, did not present any shipping documents. Also, since Instituto never had any communication with S & R concerning payment prior to September, it appears that Instituto anticipated receiving payment from Guzman on August 20. It also would seem that after such payment from Guzman was not forthcoming, Instituto decided "to take a flyer" and attempt to charge S & R.

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Instituto which is shabby at best and at worst offends the conscience.

33. According to Instituto, Guzman gave it a check on September 26, 1975 for \$606,948.74 for the "account" of S & R covering the balance allegedly due at that time.* On that date Instituto informed S & R that the check had been delivered and that Instituto's draft was being recalled. On October 7, however, Instituto informed S & R that the check was returned for insufficient funds.

34. Then, on October 9, 10 and 14, 1975 S & R had several conversations with representatives of Instituto. In these conversations S & R was told that the matter was clarified; that the entire dispute was between Instituto and Guzman; and that S & R was not responsible for any debt. Instituto promised to send a telex confirming this fact. In a telex of October 14 Guzman confirmed that "S & R is not involved in any problem with Inmecafe [Instituto]" and that "they are sending today a telex, absolving your co. of any trouble (Mr. Lazo)." Instituto never did send the confirming telex despite repeated requests by S & R.

35. It now appears that at this time Instituto was involved in negotiations with Guzman who delivered to Instituto, between September 29 and October 13, four promissory notes totalling \$482,000. In addition Guzman executed and delivered an agreement dated October 13, 1975, a copy of which together with an

*At this time S & R still did not know exactly what had transpired between Guzman and Instituto, or that it had any open account, or that Guzman was attempting to liquidate that account.

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attached English translation is annexed hereto as Exhibit 12 and which states in relevant part that

"By this means I commit myself to pay all the interest charges incurred by the delay in payment of the business transaction effected with the INSTITUTO MEXICANO DEL CAFE in which I purchased 6,000 (SIX THOUSAND) bags of coffee as per Sale Receipt number EU/5-3164 and Invoice number 0545, as well as Banking charges caused by the returning of check number 005 Banco U.N.B.L. in the amount of Dollars \$606,948.74 (SIX HUNDRED SIX THOUSAND NINE HUNDRED FORTY EIGHT & 74/100 U.S.cy) issued by me and returned by the Bank due to lack of funds."

36. These facts establish that Instituto always had regarded Guzman as the real purchaser in interest and that no thought was given to pursuing S & R until it later became clear that Guzman could not satisfy the debt that he had created.

37. In addition, Instituto's memorandum of November 20, 1975 (and its telex of November 5, 1975), confirmed that beginning on August 26, 1975 Guzman did make numerous payments to Instituto specifically marked for application against S & R's alleged indebtedness. These payments were in addition to the check written by Guzman which did not clear. Instituto has admitted payments (and has issued receipts) totalling \$244,000.

38. Instituto also has admitted receipt of \$120,933 directly from S & R which it recognizes as an offset to the purchase price for the 6,000 bags, but not as full payment on the one contract of August 6, 1976 for 1,000 bags. Instituto also has confirmed receiving an additional \$80,000 from Guzman. Further, S & R has received both written and oral communications from Guzman and his companies that additional cash payments were

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made to Instituto and that hundreds of bags of coffee were delivered to Instituto to be applied to S & R's "account".

Instituto has admitted that a substantial amount of this coffee was purchased by Guzman with funds he received from S & R.

Finally, S & R has been informed by Mr. Guzman's business associate, Arturo Velazquez Ceballos, that the Mexican Government has seized Guzman's companies and valuable coffee contracts as security for his obligations to Instituto. On the basis of this information, S & R believes that any alleged indebtedness to Instituto has been paid in full.

39. Despite all of the payments of cash and property aimed at eliminating the alleged S & R indebtedness, Instituto has insisted upon applying the payments (except the \$120,933 paid by S & R directly) against the indebtedness of Guzman and his companies to Instituto. As a result Instituto claims that S & R owes \$606,948. S & R refuses to pay this sum, believing that (1) it has no liability to Instituto and further that (2) Guzman has paid a substantial part if not all of the claimed amount.

S & R's Claim.

40. S & R claims that Guzman's authority vis-a-vis Instituto was limited to communicating a single offer to purchase 1,000 bags of coffee; that this offer (as all S & R offers) required a confirming Green Coffee Association contract in accordance with S & R's offer, with the prevailing course of dealing between S & R and Instituto and with trade custom; that in

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shipping the 6,000 bags in issue Instituto failed to comply with the standard delivery terms and that had Instituto so complied, no party would have suffered any loss. S & R also contends that in accordance with any written contracts relevant to this dispute, with prior business dealings between S & R and Instituto and with trade practice, all issues concerning the formation of any contract, the authority of agents, breaches of contracts, and damages must be determined in arbitration before the Green Coffee Association in New York City.

Instituto's Improper Mexican Lawsuit

41. Instituto has failed to take its dispute with S & R to arbitration; instead, it has commenced an action for the \$606,948 in Superior Court in Mexico.

42. In addition, S & R believes that Instituto has embarked upon an outrageous course of conduct calculated to dissuade S & R from defending in Mexico. On about November 20, 1975 Instituto's general counsel, Mr. Garza, together with Instituto's New York-based Administrative Officer, Jesus Rodriguez, had a meeting with S & R in New York to discuss a resolution of the dispute. Although S & R denied liability, it offered \$30,000 plus an assignment of its rights against Guzman in settlement. S & R was asked to confirm the offer in writing and on the very next day, November 21, S & R sent such a confirming letter, a copy of which is annexed hereto as Exhibit 13*.

43. Instituto's response was to make a defamatory accusation against S & R which was as false as it was incredible and

*This letter was dictated in the presence of and was acceptable in form to Messrs. Garza and Rodriguez.

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appalling. By telex dated December 2, 1975 a copy of which (with an English translation attached) is annexed hereto as Exhibit 14 Instituto denounced S & R for attempting to bribe Mexican public officials through the proposal in its letter of November 21. Instituto also threatened to denounce S & R before the New York Stock Exchange, International Coffee Association, Green Coffee Association, O.I.C., National Coffee Association, and all of the "producing countries of mild coffees Centrals, Columbia and Brazil". A copy of the telex is indicated as having been sent to the United States State Department. S & R would have been tempted to disregard this blatant lie but for the shocking fact that it constituted the stated position of the Mexican Government.

44. On or about April 21, 1976 Instituto's New York Attorneys filed an ex parte application in the United States District Court for the Southern District of New York to obtain an Order Granting Effect to Letters Rogatory for the purpose of serving process in the Mexican action upon S & R. Such an order was issued by this Court under date of April 26, was filed May 13, 1976 and was served on S & R May 18, 1976 together with the "complaint" filed in Mexico. The complaint was in Spanish and none of the exhibits referred to therein were attached. (See Exhibits 1 and 2).

45. It is noteworthy that the English summary of Instituto's claim which was submitted to this Court in the request for Letters Rogatory did not refer to a section of paragraph XIII of the "complaint", which, as translated by S & R, prominently

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states in all capital letters:

"I CLARIFY TO YOUR HONOR THAT THE PENAL ACTIONS THAT CAN BE DERIVED FROM THIS OPERATION AS WELL AS THOSE CORRESPONDING TO THE CRIME OF DRAWING A CHECK WITHOUT FUNDS, I RESERVE IN AN ESPECIAL FORM TO FORMULATE AT THE OPPORTUNE MOMENT AND BEFORE THE COMPETENT AUTHORITIES THE RESPECTIVE PENAL DENUNC .TION."

46. S & R retained the International law firm of Baker & McKenzie as well as the noted dean of the Free Mexican Law School, Garcia Jimeno, to advise it with respect to defending against the Mexican action. Their advice was that:

a. S & R is not subject to the personal jurisdiction of any court in Mexico.

b. When the Mexican Government is party a lawsuit in Mexico, if a representative of the opposing party personally appears in Mexico, that representative frequently is held in "protective custody" pending the resolution of the litigation. In short, no principal of S & R could appear in Mexico to assist in the defense of the action without risking incarceration - a shocking violation of due process but nonetheless a powerful inducement to "settle."

c. The exhibits to the official complaint were and are "locked up" with the court in Mexico and may not be examined unless and until S & R authorized counsel to appear in the Mexican proceeding in its behalf.

d. As a practical matter, a party cannot

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make a "special appearance" to contest jurisdiction in Mexico; pending the determination of a jurisdiction motion, the party is required to answer and defend on the merits. Further, S & R was advised that an appearance under such circumstances could well deprive it of an opportunity to contest jurisdiction in a New York court.

47. I must stress to this court the profound belief of S & R and its counsel that it simply is not safe for any principal of the company to appear in Mexico in defense of the Mexican action. To appear in Mexico would be to risk "protective custody" as a material witness in a mercantile dispute; to risk arrest for some unspecified penal offense arising out of Guzman's unauthorized conduct and issuance of a bad check, and to risk arrest for bribery. The entire situation is a bizarre nightmare. It started with a simple purchase of but 1,000 bags of coffee from Instituto pursuant to S & R's customary contract requiring arbitration of all disputes before the Green Coffee Association. Thereafter Guzman, who has had a long relationship with Instituto, engaged in a course of conduct unauthorized by and unknown to S & R. Instituto now has control over Guzman and all of his assets and S & R is confronted with a Mexican action for over \$600,000, the impossibility of defending itself in Mexico, a certain default judgment, multiple enforcement actions and incalculable financial and other damages. I and the other officers of S & R simply cannot believe that such a result can obtain.

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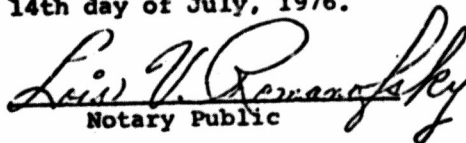
The Relief Requested from
This Court by S & R

48. For all of the reasons set forth above, S & R respectfully requests that this Court order Instituto to proceed to arbitration of its dispute with S & R. Arbitration is the procedure required by all written contracts between S & R and Instituto, by the star ~~face~~ Green Coffee Association contract always used in the course of dealing between S & R and Instituto and by trade practice. Further, S & R respectfully asks this Court to vacate its Order Granting Effect to Instituto's Letters Rogatory and to stay Instituto from prosecuting any proceeding or entering or enforcing any judgment based upon service of such letters so that the parties properly may resolve their disputes -- through arbitration -- and so that Instituto will not improperly use this Court to obtain jurisdiction over S & R and a judgment to which it decidedly is not entitled.


JACK BLOOM

Sworn to before me this

14th day of July, 1976.


Notary Public

LOIS V. ROMANOFSKY
Notary Public State of New York
No. 41-8630245 Queens County
Comm. Expires March 30, 1978

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT

FILED
MAY 13, 1976

S.D. OF N.Y.

M 11-120

Fee \$4.1⁰⁰

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In the Matter of Letters Rogatory :
Issued by the Twenty-Eighth Civil :
Judge of the Superior Court of :
Justice of the Federal District :
and Territories, Republic of :
Mexico, Having Reference to the :
Ordinary Mercantile Proceeding :
Instituted Thereat by Instituto :
Mexicano Del Cafe, Plaintiff, :
Against The Sprague & Rhodes :
Commodity Corporation and Mr. :
Armando Guzman Villanueva, :
Defendants. :

ORDER GRANTING EFFECT
TO LETTERS ROGATORY

----- x
Upon reading and filing the affidavit of Robert M. Blum sworn to April 21, 1976, pursuant to authority granted to him by the Twenty-Eighth Civil Judge of the Superior Court of Justice of the Federal District and Territories, Republic of Mexico, annexing thereto Letters Rogatory issued from said court to the United States District Court for the Southern District of New York, whereby a) the affiant has been authorized to intervene on behalf of Instituto Mexicano Del Cafe with respect to its claim against The Sprague & Rhodes Commodity Corporation, a corporation in the City and State of New York, and b) this Court has been duly requested to direct service of process upon The Sprague & Rhodes Commodity Corporation, consisting of a true copy of the said Letters Rogatory and documents annexed thereto, as issued by said court of the Republic of Mexico, under file No. 1382/76,

EXHIBITS 1 and 2

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NOW, upon application of said affiant, and in accordance with said Letters Rogatory, and due deliberation having been had thereon, and this Court having determined to grant the relief thereby sought; it is hereby

ORDERED, that the United States Marshal or his deputy in and for this District shall personally serve a true copy of the Letters Rogatory and official translation thereof, and the documents thereto annexed, upon The Sprague & Rhodes Commodity Corporation at 99 Wall Street, New York, New York 10005, by delivering the same to, and leaving it with, an officer, director, managing or general agent, cashier or assistant cashier, or to any other agent authorized by appointment or law to receive such service; and that such service being so effected, proof thereof shall be personally made and delivered to said affiant in accordance with subdivision (g) of Rule 4 of the Federal Rules of Civil Procedure, declaring, among other things, the name and title of the person served, the date and place of service, and a description of the documents served.

Dated: New York, New York
April 26, 1976

SO ORDERED:

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk CHIEF JUDGE, U.S.D.C.

By M. Harrison
Deputy Clerk

H. DAVID N. EDELSTEIN

M. J. ...

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of Letters Rogatory :
Issued by the Twenty-Eighth Civil :
Judge of the Superior Court of :
Justice of the Federal District :
and Territories, Republic of :
Mexico, Having Reference to the :
Ordinary Mercantile Proceeding :
Instituted Thereat by Instituto :
Mexicano Del Cafe, Plaintiff, :
Against The Sprague & Rhodes :
Commodity Corporation and Mr. :
Armando Guzman Villanueva, :
Defendants. :

AFFIDAVIT OF ROBERT M.
BLUM IN SUPPORT OF EX
PARTE ORDER PURSUANT
TO 28 U.S.C.A. §1696

----- x
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT M. BLUM, being duly sworn, says:

1. I am a member of the Bar of this Court and of the State of New York, and a partner in the firm of Silberfeld, Danziger & Bangser, with offices for the practice of law at 230 Park Avenue, New York, New York. I make this affidavit pursuant to Section 1696 of Title 28 of the United States Code, in connection with the claim of Instituto Mexicano Del Cafe ("Instituto"), an agency of or authority established by the government of the Republic of Mexico, against The Sprague & Rhodes Commodity Corporation ("Sprague & Rhodes") and Armando Guzman Villanueva ("Guzman"); and in accordance with the request made to this Court and to me by the Honorable Manuel L. Nunez Santillan, Twenty-Eighth Civil Judge of the Superior

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Court of Justice in and for the City of Mexico (the "Mexican Civil Court").

2. Attached hereto and tendered to this Court as a part of this affidavit are the original Letters Rogatory issued by the Mexican Civil Court under file No. 1382/76, official communication No. 956/76, and addressed to this Court under date of March 30, 1976. Fastened to the Letters Rogatory is a translation thereof certified under seal of the translator and sworn to as a true and exact translation before Hon. Lana Chumley, Vice Consul of the United States of America at Mexico City, on April 8, 1976, as well as a certified copy of a demand or complaint on the part of Instituto containing a simple statement of its claim against Sprague & Rhodes and Guzman. The documents thus described are hereinafter referred to collectively as the "Letters Rogatory."

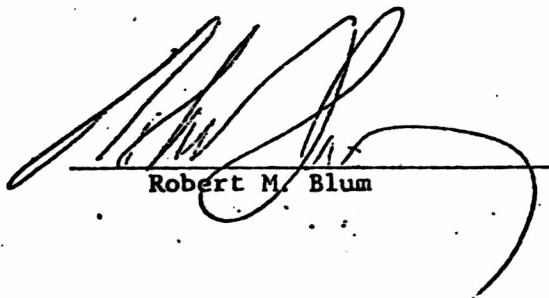
3. As appears from the Letters Rogatory, Instituto has a claim against Sprague & Rhodes in the aggregate sum of \$628,191.95, plus various banking charges, other damages, and the expenses and costs of the proceeding commenced by Instituto in the Mexican Civil Court against Sprague & Rhodes and Guzman. Paragraph e of the request of Lic. Hector Garza Rodriguez, an officer of Instituto, attached to and forming a part of the Letters Rogatory, asks that the Letters Rogatory themselves be addressed by the Mexican Civil Court to this Court, authorizing me to intervene in connection therewith on behalf of Instituto. Accordingly, the decree of the Mexican

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Civil Court (shown as commencing on page 3 of the official translation) asks the assistance of this Court by summoning Sprague & Rhodes to respond to the claim made against it by Instituto through service upon Sprague & Rhodes at its domicile at 99 Wall Street, New York, New York 10005, of a simple statement of the claim, in which matter I am likewise authorized to provide such assistance as may be appropriate.

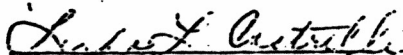
4. Accordingly, I respectfully pray that this Court make an order directing the United States Marshal in and for this United States District promptly to effect due service upon Sprague & Rhodes at 99 Wall Street of a true copy of the Letters Rogatory, which includes a simple statement of the claim of Instituto; and that the Marshal thereupon make suitable proof of such service, setting forth (among other things) the name and title of the individual receiving service of the same, and the date and place of such service.

5. No previous application has been made for the relief herein requested.


Robert M. Blum

Sworn to before me this

21st day of April, 1976



LINDA L. CASTRILLI
Notary Public, State of New York
No. 31-513125
Qualified in New York County
Commission Expires March 31, 1977

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Seal of the Superior Court of Justice
of the Federal District and Territories

28th Civil Court
First Secretariat
File No. 1382/76

Seal of the Twenty-Eighth Civil Court

Citizen Attorney Manuel L. Muñoz Santillán, Twenty-Eighth Civil Judge of the City of Mexico, to you Competent Judge of The United States District Court of New York, to whom I have the honor of addressing:

I MAKE KNOWN:

That in the records of the ordinary mercantile proceeding instituted by INSTITUTO MEXICANO DEL CAFE against THE SPRAGUE & RHODES COMMODITY CORP. and MR. ARMANDO GUZMAN VILLANUEVA, I have resolved to remit to you Letters Rogatory containing the following inserts:

WRITTEN IN PART: Twenty-Eighth Civil Judge.- Héctor Garza Rodríguez, a Mexican citizen, married, of full age, in the legal exercise of the profession of attorney, as per certificate No. 176497, issued by the General Office of Professions, designating as domicile to receive all kinds of notifications the Legal Department of Instituto Mexicano del Café, located on the 11th floor of the building marked with number 300 at Avenida Paseo de la Reforma in this City, and authorizing attorneys Jorge León Orantes Vallejo, J. Javier Elizondo Elizondo, Eduardo Ibarra Guajardo, Raúl Chávez Alvarez, Jorge Quintanilla Gómez and law clerk Alejandro Jiménez Tinoco to intervene in this matter, before you respectfully appear and declare:

That in my capacity of general attorney-in-fact for law-suits and collections of Instituto Mexicano del Café, as evidenced by certified copy of public instrument No. 2317, dated May 2, 1975, granted before Notary Public No. 137 of the Federal District, Mr. Carlos de Pablo (Annex "1"), I appear

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by means of this communication to sue normally through an ordinary mercantile proceeding the company known as The Sprague & Rhodes Commodity Corporation, domiciled at 99 Wall Street, New York, N. Y. 10005 and Mr. Armando Guzmán Villanueva, as representative in this City of said corporation, domiciled at office 301 of the building marked with No. 538 at Avenida Homero in Colonia Polanco of this City, from whom I jointly claim as solidarily liable the fulfillment of the obligation of payment arising from the bargaining and sale agreement of 6,000 sacks of washed prime coffee, new crop, American mix, entered into by the sued company through its representative, Mr. Armando Guzmán Villanueva, and Instituto Mexicano del Café, the former as Purchaser and the latter as Seller of said grain, from which payment of the following prestations derives:

a) For principal obligation, the amount of \$606,948.75 USCy (SIX HUNDRED AND SIX THOUSAND NINE HUNDRED AND FORTY EIGHT US DOLLARS 75/100) or its equivalent in Mexican currency at the moment of effecting payment.

b) The amount of \$21,243.20 USCy (TWENTY ONE THOUSAND TWO HUNDRED AND FORTY THREE US DOLLARS 20/100) to cover moratory interest at the legal rate, computed from the moment of non-compliance of the obligation to pay to date, as well as payment of moratory interest which might continue to be caused until the total payment of the claimed debt is effected.

c) Pecuniary amount resulting from the banking charges made to the institution I represent in view of collection negotiations undertaken against defendants, as well as all expenses incurred in through noncompliance of the agreement by defendants, settlement to be presented at the opportune moment.

d) Payment of damages as a consequence of noncompliance of

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the mentioned bargaining and sale agreement.

e) Expenses and costs originating from the handling of the present proceeding.... THIRD.- Address Letters Rogatory, in duplicate, to the following authority: "UNITED STATES DISTRICT COURT OF NEW YORK", with domicile at The United States Courthouse, New Square, New York, N. Y., The United States of America, authorizing Mr. Robert M. Blum of the firm Silberfeld Danzinger & Bangser, to intervene in behalf of plaintiff, said Letters Rogatory to be addressed in the manner and terms established by paragraph III, of Article 302 of the Federal Code for Civil Procedures applied in supplemental manner to the Code of Commerce.....Mexico, Federal District, March 23, 1976. Respectfully submitted. Héctor Garza Rodríguez. Illegible signature. Initials.

D E C R E E: Mexico, Federal District, March 25, 1976.

To the records the brief and enclosures of the matter; make up a file and register correspondingly. Mr. Héctor Garza Rodríguez is recognized as general attorney-in-fact of Instituto Mexicano del Café, in the terms of notarial certified copy which he exhibits. The proposed suit in the ordinary mercantile proceeding is admitted with basis on Articles 1049, 1055, paragraph I, 1056, 1090, 1091, 1106 and others relative to the Code of Commerce and provided for in Article 156, paragraph IV of the Code for Civil Procedures applied suppletorily; proceed to summon defendants granting them a term of five days to answer the complaint and to file exceptions. Remit Letters Rogatory in duplicate to The United States District Court of New York, with domicile at The United States Courthouse, New Square, New York, N. Y., The United States of America, or any other competent authority so that in assistance of this Court it proceed to summon The Sprague & Rhodes Commodity Corp., with

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domicile at 99 Wall Street, New York, N. Y. 10005, granting an additional term of twenty-one days to answer the complaint taking into consideration the distance involved. Mr. Robert M. Blum of the firm Silberfeld Danzinger & Bangser is authorized so that in assistance of plaintiff he may intervene in the prosecuting of mentioned Letters Rogatory the annexes of the complaint remaining at the Secretariat of this Court so that defendants may be apprised of their contents, in the terms of paragraph III of Article 161 of the Civil Code. Notify. Resolved and read by the Twenty-Eighth Civil Judge, Mr. Manuel L. Núñez Santillán. Certified. Two illegible signatures. Initials.

AND IN ORDER THAT MY MANDATE BE CARRIED OUT FAITHFULLY AND EXACTLY IN BEHALF OF THE AUTHORITIES OF THE MEXICAN REPUBLIC I KINDLY REQUEST THAT ONCE THIS REQUISITION IS IN YOUR HANDS SAME BE PROSECUTED IN ITS TERMS AND RETURNED TO ME ASSURING YOU OF MY RECIPROCITY IN SIMILAR CASES AND WHEN REQUESTED BY YOU IN THE SAME MANNER. ISSUED IN THE CITY OF MEXICO, FEDERAL DISTRICT, ON THE THIRTIETH DAY OF MARCH NINETEEN HUNDRED AND SEVENTY SIX.

The Twenty-Eighth Civil Judge

(illegible signature)
Manuel L. Núñez Santillán

The First Secretary of Resolutions

(illegible signature)
Napoleon Enrique Procel y Calderón

Seal of the Twenty-Eighth Civil Court

Legalization No. 4523

Taxes Paid: 50.00 MexCy

Cancelled 50.00 MexCy Tax Stamp

By resolution of the Head of the Department of the Federal District, Juan Manuel Medina Velasco, Assistant Head of the Office of Notarial and Juridical Matters of the General

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Juridical and Government Bureau, legalizes the Seal to
Authorize and the signatures of Messrs. Manuel L. Muñoz
Santillán and Napoleón Enrique Procel y Calderón, who
were Judge and First Secretary of Resolutions, respectively,
of the Twenty-Eighth Civil Court on the date on which they
authorized said document.

Mexico, Federal District, April 2, 1976

(illegible signature) Seal of the Department of the Federal District
General Juridical and Government Bureau
Office of Notarial and Juridical Matters

Fernando Gutiérrez Barrios, Under Secretary of the
Ministry of the Interior, by resolution of the Secretary,
CERTIFIES: That Mr. Juan Manuel Medina Velasco was Assistant
Head of the Office of Notarial and Juridical Matters of
the General Juridical and Government Bureau on the 2nd inst
and that the foregoing signature is his.

Mexico, Federal District, April 5, 1976

Registered under No. 2186
Director General of the Government

(illegible signature)
Manuel Bartlett C.

Cancelled 50.00 MexCy Tax Stamp

Seal of the Ministry of
the Interior
Under Secretariat

Seal of the Federal Executive Power
Ministry of the Interior
General Government Bureau

No. 47697

The Ministry of Foreign Affairs C E R T I F I E S:

That Mr. Fernando Gutiérrez Barrios was Under Secretary
of the Ministry of the Interior on April 5, 1976, and that
the foregoing signature is his.

Tlaltelolco, April 8, 1976

By Order of the Secretary

The Assistant Director General
of Consular Services

This Ministry does NOT

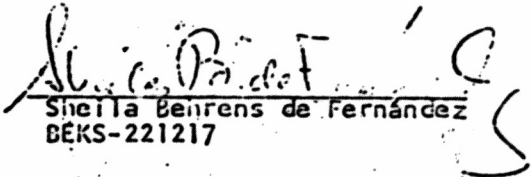
(illegible signature)
Luis Wibo Alfaro

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concerns the contents of this
document

SHEILA BENRENS DE FERNANDEZ, Expert Translator duly appointed
by the Superior Court of Justice of the Federal District of
Mexico, hereby C E R T I F I E S: that the foregoing is a true
and correct translation to English of the document in Spanish,
to the best of her knowledge and belief.

This certification is issued in Mexico, Federal District, on
April 8, 1976.


Sheila Benrens de Fernández
BEKS-221217

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Juzgado28..... de

lo Civil

.....la..... Secretaria

Exp.1382/76.....

Oficio Núm.956/76.....

C. JUEZ COMPETENTE DE UNITED STATES DISTRICT
COURT OF NEW YORK
P R E S E N T E

En dos fojas útiles remito a usted Carta Rogatoria deducida del juicio ORDINARIO MERCANTIL -- promovido por el INSTITUTO MEXICANO DEL CAPE en -- contra de THE SPRAGUE & PHODES COMMODITY CORP. Y -- SR. ARMANDO GUZMAN VILLANUEVA, encareciéndole, atentamente, que mediante su conducto se diligencie dicha Carta Rogatoria y una vez cumplimentada dicha comisión se devuelva a este Juzgado.

A T E N T A M E N T E .

SUPRÁGICO EFECTIVO. NO REELECCION.
México, D.F., a 30 de Marzo de 1976
EL C. JUEZ VIGESIMO OCTAVO DE LO CIVIL



EL C. MANUEL L. NUÑEZ SANTILLAN.

JUZGADO VIGESIMO OCTAVO
DE LO CIVIL

ELNS/manf.

presente escrito a demandar formalmente en la VIA ORDINARIA MERCANTIL, a la Sociedad denominada THE SPRAGUE & PHODES COMMODITY CORPORATION, quien tiene su domicilio en 99 Wall Street, New York, N.Y. 10005 y al SR. ARMANDO GUZMAN VILLANUEVA como Representante en esta Ciudad de

UNITED STATES
FEDERAL DISTRICT
CITY OF MEXICO
EMBASSY OF THE UNITED
STATES OF AMERICA

ss:

Before me, LATA CHUMLEY AMERICAN VICE CONSUL, Consul of the United
States of America at Mexico, D. F., Mexico, duly commissioned and
qualified, personally appeared Alfonso B. de F. ...

who, being duly sworn deposes and says as follows:

- (1) My name is Alfonso B. de F. ...
and I reside at 1. Calle H 9-11, Mexico D.F.
- (2) I have been familiar with the English and Spanish
languages for the past 52 years. I made the annexed
translation from Spanish to English. The said
translation is to best of my knowledge and belief a true
and exact translation of the original document.

further deponent saith not.

Subscribed and sworn to before me this 5th day of April
19 76.

For contents of the annexed documents I assume no
responsibility.

Paul G. ...
Consul of the United States
of America

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Seal of the Superior Court of Justice
for the Federal District and Territories

28th Civil Court
First Secretariat
File 1382/76
Official Communication No. 956/76

TO THE COMPETENT JUDGE OF THE UNITED STATES
DISTRICT COURT OF NEW YORK
P R E S E N T.

In two pages of text I remit to you Letters Rogatory arising from the ordinary mercantile proceeding instituted by INSTITUTO MEXICANO DEL CAFE against THE SPRAGUE & RHODES COMMODITY CORP. and MR. ARMANDO GUZMAN VILLANUEVA, kindly requesting that through your mediation said Letters Rogatory be prosecuted and once said commission is executed same be returned to this Court.

Very truly yours,

EFFECTIVE SUFFRAGE. NO REELECTION
Mexico, D.F., March 30, 1976
The Twenty-Eighth Civil Judge

(illegible signature)
Manuel L. Nuñez Santillan

Seal of the Twenty-Eighth Civil Court

SHEILA BEHRENS DE FERNANDEZ, Expert Translator duly appointed by the Superior Court of Justice for the Federal District of Mexico, hereby C E R T I F I E S: that the foregoing is a true and correct translation to English of the document in Spanish, to the best of her knowledge and belief.

This certification is issued in Mexico City, Federal District, on April 5, 1976.

Sheila Behrens de Fernandez
Sheila Behrens de Fernandez
10-1-1977

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Juzgado23..... de

lo Civil

.....la..... Secretaría.

Exp. Núm.1382/76



INSTITUTO MEXICANO DEL CAFE
24 DE MAYO

VIGESIMO OCTAVO DE LO CIVIL DE LA CIUDAD DE MEXICO, A U-
TED CIUDADANO JUEZ COMPETENTE DE UNITES STATES DISTRICT
COUNTY OF NEW YORK, A QUIEN TENGO EL HONOR DE DIRIGIRME:

----- HAGO SABER: -----
----- Que en los autos del juicio ORDINARIO MERCANTIL -
promovido por INSTITUTO MEXICANO DEL CAFE en contra de
THE SPRAGUE & RHODES COMMODITY CORP. Y SR. ARMANDO GUZ-
MAN VILLANUEVA, he acordado se gire a usted atenta cart
rogatoria con los siguientes insertos: -----

ESCRITO EN LO CONDUENTE: C. JUEZ VIGESIMO OCTAVO DE LO CIVIL.

----- HECTOR GARZA RODRIGUEZ, Mexicano, casado, mayor de
edad, en el legal ejercicio de la Profesión de Abogado
según Cédula No. 176497 expedida por la Dirección Gene-
ral de Profesiones, señalando como domicilio para oír t:
da clase de notificaciones, la Gerencia Jurídica del In-
stituto Mexicano del Café, ubicada en el piso 11 del edi-
ficio marcado con el No. 300 de la Ave. Paseo de la Re-
forma de esta Ciudad, autorizando para que intervengan
en el presente negocio a los señores LICs. JORGE LEON
CRANTES VALLEJO, J. JAVIER ELIZONDO ELIZONDO, EDUARDO
IBARRA GUAJARDO, PAUL CHAVEZ ALVAREZ, JORGE QUINTANILLA
COMEZ y Pasante en Derecho ALEJANDRO JIMENEZ TIMOCO, ant
usted respetuosamente comparezco y expongo: -----

----- Que en mi carácter de Apoderado General para plei-
tos y cobranzas del Instituto Mexicano del Café, según
lo acredito con el Testimonio de la Escritura Pública
No. 2,317 de fecha 2 de Mayo de 1975, pasada ante la Fé
del Notario Público No. 137 del Distrito Federal, Sr.
Lic. CARLOS DE PABLO (Anexo "1"), ocurro por medio del
presente escrito a demandar formalmente en la VIA ORDINA-
RIA MERCANTIL, a la Sociedad denominada THE SPRAGUE &
RHODES COMMODITY CORPORATION, quien tiene su domicilio
en 99 Wall Street, New York, N.Y. 10005 y al SR. ARMANDO
GUZMAN VILLANUEVA como Representante en esta Ciudad de

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dicha persona Moral, quien tiene su domicilio en el Despacho 301 del edificio marcado con el No. 532 de la Ave. Homero en la Colonia Polanco, de esta Ciudad, de quienes reclamo conjuntamente como responsables solidarios el cumplimiento de la obligación de pago por la compra-venta de 6,000 sacos de café prima lavado, cosecha nueva, preparación americana, celebrada entre la Sociedad demandada, por conducto de su representante SR. ARMANDO GUZMAN VILLANUEVA y el INSTITUTO MEXICANO DEL CAFÉ; la primera como Compradora y el último como Vendedor de dicho grano, lo cual se traduce en el pago de las siguientes prestaciones:

a) Por concepto de Suerte Principal, la cantidad de 606,948.74 DLS. (SEISCIENTOS SEIS MIL NOVECIENTOS CUARENTA Y OCHO 74/100 DOLARES AMERICANOS), ó su equivalente en moneda nacional al momento de efectuarse el pago.

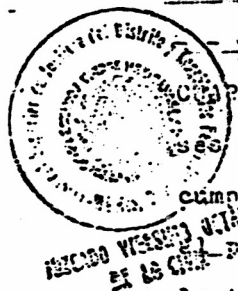
b) La cantidad de 21,243.20 DOLLS (VEINTIUN MIL DOSCIENTOS CUARENTA Y TRES 20/100 DOLARES AMERICANOS) por concepto de intereses moratorios al tipo legal, computados desde el momento del incumplimiento de la obligación de pago hasta esta fecha; así como pago de los intereses moratorios que se sigan causando hasta la total liquidación del adeudo que se reclama.

c) La cantidad pecuniaria que resulte de los cargos bancarios hechos al Organismo que represento en virtud de las gestiones de cobro realizadas a los demandados; así como todos los gastos incurridos por el incumplimiento del contrato por parte de los reos, liquidación que será presentada en el momento oportuno.

d) El pago de daños y perjuicios que sean consecuencia del incumplimiento del contrato de compra-venta mencionado.

e) Los gastos y costas que se originen con motivo de la tramitación del presente juicio.....

TERCERO. Dirigir Carta Rogatoria por duplicado a la siguiente autoridad: "UNITES STATES DISTRICT COURT OF NEW YORK" con domicilio en THE UNITED STATES COURTHOUSE FOLER SQUARE, NEW YORK, N.Y. ESTADOS UNIDOS DE NORTEAMERICA, autorizando para que intervenga a nombre de la actora al Lic. Robert M. Blum. del Despacho Silberfeld Danzinger & Bangser, la cual deberá ser dirigida en la forma y términos establecidos por





Juzgado de
lo Civil

Secretaría.

Exp. Núm.

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la fracción III, del Artículo 302 del Código Federal de Procedimientos Civiles aplicado en forma supletoria al Código de Comercio.....México, D.F., a 23 de Marzo de 1976. P.M. TESTO LO NECESARIO.- LIC. HECTOR GARZA RODRIGUEZ. Una firma ilegible. Rúbrica.-----

A U T O : México, Distrito Federal, a veinticinco de marzo de

mil novecientos setenta y seis.-----

----- A sus autos el escrito de cuenta y anexos que se

acompañan, fórmese el expediente y regístrese como corres-

ponda. Se reconoce al Licenciado HECTOR GARZA RODRIGUEZ su

carácter de Apoderado General del INSTITUTO MEXICANO DEL

FE, en los términos del testimonio notarial que exhibe.

Se admite la demanda propuesta en la vía ordinaria mercantil,

con fundamento en los artículos 1049, 1055 fracción

1056, 1090, 1091, 1106 y demás relativos del Código de Comercio,

en lo previsto por el artículo 156 fracción IV de

Código de Procedimientos Civiles aplicado supletoriamente

Procédase a emplazar a los demandados, concediéndoles el

término de cinco días para contestar la demanda y oponer

excepciones. Gírese Carta Rogatoria por duplicado a "UNIT

STATES DISTRICT COURT OF NEW YORK" con domicilio en THE UNI

STATES COURTHOUSE FOLENSQUARE, NEW YORK, N.Y. ESTADO

UNIDOS DE NORTEAMERICA O CUALQUIER OTRA AUTORIDAD COMPETENTE

TE, para que en auxilio de este Juzgado proceda a emplazar

a THE SPRAGUE & PHODES COMMODITY CORP. con domicilio en 9

WALL STREET, NEW STREET, NEW YORK, N.Y. 10005, concediénd

le el término adicional de veintidós días para contestar la

demandas por razón de la distancia. Se tiene por autorizado

al señor LIC. ROBERT M. BLUM, del Despacho Silberfeld Dar

zinger & Bangser, para que en auxilio de la parte actora

intervenga en la diligenciación de la Carta Rogatoria men

cionada. Quedando en la Secretaría de este Juzgado los as

xos de la demanda para que se enteren de su contenido los

demandados en los términos de la fracción III del artículo

161 del Código Civil. Notifíquese. Lo proveyó y firmó el

1254

Ciudadano Juez Vigésimo Octavo de lo Civil, Licenciado MANUEL L. NÚÑEZ SANTILLAN. Doy fe. Dos firmas. Alegibles. Públicas. ---
Y PARA QUE LO POR EL MANDATO TENGA SU MAS FIEN Y EXACTO CUMPLI-
MIENTO EN NOMBRE DE LOS PODERES DE ESTA REPUBLICA DE MEXICO Y DE
MI PARTE LE SUPlico QUE EN CUANTO ESTA REQUISITORIA CORRE EN SU
PODER SE SIYA MANDARIA DILIGENCIAR EN SUS TERMINOS Y DEVOLVERME-
LA SEGUIN DE MI RECIPROCIDAD EN CASOS ANALOGOS Y CUANDO POR-USTED
FUERE REQUERIDO EN IGUAL FORMA. DADA EN LA CIUDAD DE MEXICO, DIS-
TRITO FEDERAL, A LOS TREINTA DIAS DEL MES DE MARZO DE MIL-NOVE-
CIENTOS SETENTA Y SEIS. ---
EL C. JUEZ VIGESIMO OCTAVO DE LO CIVIL

LICENCIADO L. NÚÑEZ SANTILLAN.



MANUEL VIGESIMO OCTAVO
DE LO CIVIL

EL C. PRIMER SRIO. DE ACUERDOS

LIC. NAPOLEON ENRIQUE PROCEL Y CALDERON

LEGALIZACION NUMERO: 4523 Derechos Pagados: \$ 50.00

Por acuerdo del C. Jefe del Departamento del Distrito Federal
el C. Lic. JUAN MANUEL MEDINA VELAZCO Subjefe de la Oficina
de Asuntos Materiales y Jurídicos de la Direc. Gral. Jurídica y de
Gobierno, LEGALIZA el sello de autorizar y las firmas de los
Licenciados MANUEL L. NÚÑEZ SANTILLAN

Y NAPOLEON ENRIQUE PROCEL Y CALDERON
quienes eran Juez
PRIMER Secretario de Acuerdos respectivamente del
Juzgado VIGESIMO OCTAVO DE LO CIVIL.
en la fecha en que autorizaron dicho documento.

México, D. F., a 2 de Abril

EL C. FERNANDO

A55

GUTIERREZ BARRIOS, Subsecretario de Gobernación, por Ac. del C. Secretario, CERTIFICA: que el C. Lic. Juan Manuel Medina Velasco - era Subjefe de la Oficina de Asuntos Notariales y Jurídicos de la Dirección General Jurídica y de Gobierno del Departamento del Distrito Federal, el día 2 del actual y cuya la firma que antecede.

México, D. F., a 5 de abril de 1976.

Registrada bajo
el No. 2186.
El Director Gral.
de Gobierno.

LIC. MANUEL BARTLETT D.

gr.

SECRETARIA DE GOBERNACION
DISTRITO FEDERAL



F. S (Consular)

47397

Número

LA SECRETARIA DE RELACIONES EXTERIORES CERTIFICA:

el Sr. FERNANDO GUTIÉRREZ BARRIOS,

era Subsecretario de Gobernación, el

día cinco de abril de mil novecien-
tos setenta y seis.

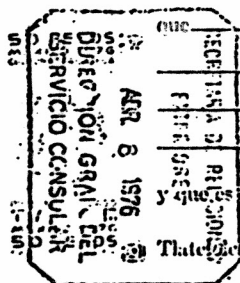
y que es cuya la firma que antecede.

México, D. F., a 8 de abril de 1976.

P. O. DEL C. SECRETARIO.

arf.

ESTA SECRETARIA NO ASUME
RESPONSABILIDAD ALGUNA
POR EL CONTENIDO DE ESTE
DOCUMENTO.



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INSTITUTO MEXICANO DEL CAFÉ

VS.

THE SPRAGUE & BURNS COMMODITY CORP.
Y SR. ARMANDO GUZMAN VILLANUEVA
JUICIO ORDINARIO MERCANTIL

C. JUEZ VIGESIMO OCTAVO DE LO CIVIL
P R E S E N T E .

HECTOR GARZA RODRIGUEZ, Mexicano, casado, mayor de edad, en el legal ejercicio de la Profesión de Abogado, según Cédula No. 176497 expedida por la Dirección General de Profesiones, señalando como domicilio para oír toda clase de notificaciones, la Gerencia Jurídica del Instituto Mexicano del Café, ubicada en el piso 11 del edificio marcado con el No. 300 - de la Ave. Paseo de la Reforma de esta Ciudad, autorizando para que intervengan en el presente negocio a los señores LICs. JORGE LEON ORANTES VALLEJO, J. JAVIER ELIZONDO ELIZONDO, EDUARDO IBARRA GUAYARDO, RAUL CHAVEZ ALVARO, JORGE QUINTERILLA GOMEZ y Pasante en Derecho ALEJANDRO JIMENEZ TINOCO, ante usted respetuosamente comparezco y expongo.

Que en mi carácter de Apoderado General para pleitos y cobranzas - del Instituto Mexicano del Café, según lo acredito con el Testimonio de la Escritura Pública No. 2,517 de fecha 2 de Mayo de 1975, pasada ante la FÉ - del Notario Público No. 157 del Distrito Federal, Sr. Lic. CARLOS DE PAULO - (anexo "1"), ocurro por medio del presente escrito a demandar formalmente en la VIA ORDINARIA MERCANTIL, a la Sociedad denominada THE SPRAGUE & BURNS COMMODITY CORPORATION, quien tiene su domicilio en 99 Wall Street, New York, N.Y. 10005 y al SR. ARMANDO GUZMAN VILLANUEVA como Representante en esta Ciudad de dicha persona Moral, quien tiene su domicilio en el Despacho 301 del edificio marcado con el No. 538 de la Ave. Homero en la Colonia Polanco, de ésta Ciudad, de quienes reclamo conjuntamente como responsables - solidarios el cumplimiento de la obligación de pago por la compra-venta de 6,000 sacos de café prima lavado, cosecha nueva, preparación americana, celebrada entre la Sociedad demandada, por conducto de su representante SR. - ARMANDO GUZMAN VILLANUEVA y el INSTITUTO MEXICANO DEL CAFÉ; la primera como Compradora y el último como Vendedor de dicho grano, lo cual se traduce en el pago de las siguientes prestaciones:

a) Por concepto de Suerte Principal la cantidad de -----
606,918.74 DLS. (SEISCIENTOS SEIS MIL NOVECIENTOS CUARENTA Y CUATRO 74/100 DOLARES AMERICANOS), ó su equivalente en moneda nacional al momento de efectuarse el pago,

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Hoja No. 2

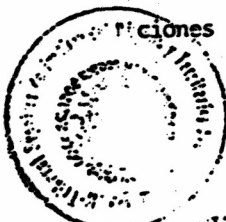
b) La cantidad de 21,243.20 DLLS. (VEINTIUN MIL DOS CIENTOS CUARENTA Y TRES 20/100 DOLARES AMERICANOS) por concepto de intereses moratorios al tipo legal, computados desde el momento del incumplimiento de la obligación de pago hasta esta fecha; así como el pago de los intereses moratorios que se sigan causando hasta la total liquidación del adeudo que se reclama.

c) La cantidad pecuniaria que resulte de los cargos bancarios hechos al Organismo que represento en virtud de las gestiones de cobro realizadas a los demandados; así como todos los gastos incurridos por el incumplimiento del contrato por parte de los reos, liquidación que será presentada en el momento oportuno.

d) El pago de daños y perjuicios que sean consecuencia del incumplimiento del contrato de compra-venta mencionado.

e) Los gastos y costas que se originen con motivo de la tramitación del presente juicio.

Fundo mi demanda en los siguientes hechos y consideraciones de derecho que a continuación preciso.



H E C H O S

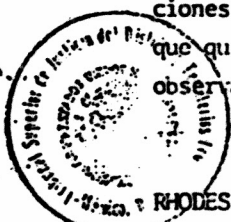
I.- Como antecedentes de los hechos que constituyen el fundamento de esta Demanda, debo consignar a su Señoría que el Instituto Mexicano del Café, es un Organismo Público del Gobierno Federal, con Personalidad Jurídica y Patrimonio propios, creado por Ley del Congreso de la Unión, publicada en el Diario Oficial de la Federación el día 31 de Diciembre de 1958 (anexo "2"), dentro de cuyos fines se encuentra el de defender y mejorar el cultivo, beneficio y comercio del café mexicano, tanto en el país como en el extranjero. Por lo anterior se dedica entre otras cosas a la compra-venta de café " consumo nacional " y venta de " café tipo exportación ".

II.- Como consecuencia de lo anterior, el día 29 de Julio de 1975, el SR. ARMANDO GUZMAN VILLANUEVA se acreditó ante el Departamento de Ventas de mi representado, ubicado en el piso 13° del edificio marcado con el No. 300 de la Ave. Pasco de la Reforma, en esta Ciudad, como representante de la Sociedad Norteamericana THE SPRAGUE & NIDDES COMMODITY CORPORATION, para concertar la compra de 3,000 sacos de-

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café verde prima lavado, cosecha nueva, al precio de \$ 80.00 DLLS. (OCHENTA DOLARES AMERICANOS) por 100 libras, F.O.B. Laredo, Tex. cuyas condiciones - de pago fueron : Giro a la vista, contra documentos de embarque, ó transfe - rencia telefónica a la cuenta y banco que indicara mi representado, pagadero contra entrega de documentos de embarque, indicándo que dicha operación que - daría confirmada con el contrato que sería enviado por su mandante, además - de su confirmación por Telex (se anexa dicha carta marcada con el No. "3").

Informo a su Señoría que es uso y costumbres establecidas in - ternacionalmente, que las transacciones de café tipo exportación sean concer - tadas en forma verbal, telefónica, telegráfica ó por Telex, para ser formali - zadas en algunos casos contra entrega de los contratos respectivos. Sin em - bargo, por regla general, dichos documentos son remitidos por las partes pos - teriormente a la fecha de envío y recibo del producto negociado. Lo anterior es consecuencia del constante cambio de precios que el café sufre en el mer - cado internacional, lo que significa que en estas transacciones la operación de compra-venta queda perfeccionada por el solo consentimiento de las partes, por la fijación del precio de venta y por el envío y recibo de conformidad - del producto negociado; situaciones que además se encuentran previstas y re - glamentadas por nuestro Código de Comercio. Prueba de lo anterior es que el Artículo 78 del Código anteriormente mencionado, establece que en las conven - ciones mercantiles, cada uno se obliga en la manera y términos que aparezca - que quiso obligarse, sin que la validez del acto comercial dependa de la --- observancia de formalidades o requisitos determinados.



III.- El día 31 de Julio de 1975, la Sociedad THE SPRAGUE & - RHODES COMMODITY CORPORATION, por conducto de su Vicepresidente Sr. JACK --- envió al Instituto Mexicano del Café, el Telex No. 232951 dirigido a - la atención del Sr. Lic. Agustín Aguilar, Gerente de Ventas, en el que con - firmó que el Sr. ARMANDO GUZMAN VILLANUEVA es el representante de dicha So - ciedad en ésta Ciudad y se encuentra autorizado para pasar ofertas en su nom - bre. Confirmó además la operación de compra-venta anteriormente mencionada, informándo que estaban enviándo el contrato No. 5437-F para cubrir los 3,000 sacos de café al precio de 80.00 DLLS. por 100 libras, F.O.B., Laredo. Que - los demás detalles de operaciones serían dados por su representante y/o en el contrato (se anexa el Telex indicado, marcado con el No. "4" y su traducción oficial al idioma español, marcado con el No. "5"). Sin embargo, la parte - compradora nunca remitió a la parte vendedora el contrato prometido.

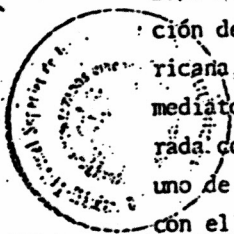
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Hoja No. 4

IV.- Basados en lo anterior, mi representado procedió a elaborar la Orden de Industrialización y Embarque No. EU/5-3164 de fecha 29 de Julio de 1975 para exportar 3,000 sacos de café verde prima lavado, - preparación americana, al precio de 80.00 DLLS. por 100 libras F.O.B. La Laredo, para embarcar de inmediato al cliente THE SPRAGUE & RHODES, Orden- que fué amparada con los lotes 9090, 9091, 9092, 9093, 9094, y 9095, cubriendo 500 sacos cada uno de ellos. (Dicha forma de control y pedidos - se anexa marcada con el No. "6").

V.- El día 12 de Agosto de 1975, el Sr. ARMANDO GUZMAN VILLA NUEVA se presentó en las Oficinas de mi representado en su calidad de representante de THE SPRAGUE & RHODES COMMODITY CORPORATION, para concertar una nueva compra por 3,000 sacos de café prima lavado, cosecha nueva, preparación americana al precio de \$ 79.50 DLLS. (SETENTA Y NUEVE 50/100 DOLARES AMERICANOS) por 100 libras F.O.B., Laredo, indicándole a la Gerencia de Ventas el interés de su mandante de que estos 3,000 sacos fueran - embarcados en forma urgente e inmediata junto con los 3,000 sacos de la Orden EU/5-3164, para lo cual ya habían procedido a enviarnos el contrato de esta nueva compra, junto con el contrato 5437-F, contratos que hasta - la fecha no hemos recibido.

VI.- Por lo anterior, el Instituto Mexicano del Café procedió de inmediato a elaborar la Orden de Industrialización y Embarque No. EU/5-3168 de fecha 13 de Agosto de 1975, que ampara la venta de exportación de 3,000 sacos de café cosecha nueva, prima lavado, preparación americana, al precio de 79.50 DLLS. por 100 libras para ser embarcados de inmediato y en forma urgente al cliente THE SPRAGUE & RHODES, cantidad amparada con los lotes Nos. 548, 549, 7119, 7120, 7121 y 7122 cubriendo cada uno de ellos 500 sacos. (Dicha forma de control y pedido se anexa marcada con el No. "7").



RECADOS VIGESIMO G TAVE

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VII.- La venta de 6,000 sacos de café anteriormente mencionada fué exportada por el INSTITUTO MEXICANO DEL CAFE y consignada a SPRAGUE & RHODES el día 19 de Agosto de 1975, al amparo de los pedimentos de exportación Nos. 13096 y 13097, los que se anexan marcados con los nos. "8" y -- "9".

VIII.- El día 20 de Agosto de 1975, fueron recibidos de conformidad por SPRAGUE & RHODES a través de su Agente Aduanal CARRILLO & COMPANY, los 6,000 sacos de café vendidos por mi mandante a la Sociedad demandada, - identificados con los lotes Nos. 548, 549, 7119, 7120, 7121, 7122, 9090, -- 9091, 9092, 9093, 9094 y 9095, motivo por el cual dicho Agente Aduanal nos -

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Hoja No. 5.

remitió el Certificado de Arribo No. 3164, el que marcado con el No. "10" se agrega al presente escrito y su traducción oficial al idioma español - se anexa marcado con el No. "11" .

IX.- El día 22 de Agosto de 1975, THE SPRAGUE & RHODES realizó a través del IRVING TRUST COMPANY de New York, un pago a mi mandante por la cantidad de 120,953.02 DLLS. como liquidación parcial de los - 6,000 sacos de café vendidos, ofreciendo además pagar el saldo final de - los mismos, según se acredita con el aviso de abono y Telex respectivo, - los que marcados con los nos. "12" y "13" se agregan al presente escrito.

X.- Sin embargo, la empresa demandada no volvió a situar a mi representado remesa alguna con el objeto de liquidar el adeudo pendiente de pago, motivo por el cual a través del BANCO NACIONAL DE COMERCIO EXTERIOR, S.A. y éste a través del BANKERS TRUST COMPANY, envió -- con fecha 28 de Agosto de 1975 a la empresa demandada el Giro No. 127/75- por la cantidad de 606,948.74 DLLS. (SEISCIENTOS SEIS MIL NOVECIENTOS - CUARENTA Y OCHO 74/100 DOLARES AMERICANOS), acompañado de la Factura No. 0545 del 28 de Agosto de 1975, suma que ampara el adeudo restante de la - operación de compra-venta y el que corresponde al importe de la Suerte - Principal que se reclama, marcados con los números "14", "15" y "16" se - anexan dichos documentos al presente ocuroso.

XI.- Sin embargo, dicha cobranza fué regresada por -- THE SPRAGUE & RHODES COMMODITY CORPORATION manifestando que únicamente - reconocían haber concertado con mi mandante, por conducto de su representante SR. ARMANDO GUZMAN VILLANUEVA, la compra de 1,000 sacos, según contrato No. C-5481, los cuales habían liquidado con el pago hecho a través del IRVING TRUST COMPANY el día 22 de Agosto de 1975.

JUZGADO VIGESIMO N°TAVI
DE LO CIVIL

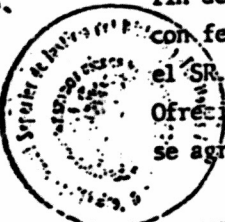
XII.- CARRILLO & COMPANY, como Agente Aduanal de THE - SPRAGUE & RHODES COMMODITY CORPORATION, el día 28 de Noviembre de 1975 - certificó haber recibido, tramitado y despachado ante la Aduana Americana 6,000 sacos de café prima lavado de 70 Kg. vendidos por el Instituto Mexicano del Café a THE SPRAGUE & RHODES COMMODITY CORPORATION de New --- York correspondiente a los lotes 548, 549, 7119, 7120, 7121, 7122, 9090, 9091, 9092, 9093, 9094 y 9095 amparando 500 sacos cada lote, manifestando además que su cliente le liquidó gastos y honorarios por el manejo, tramitación y envío de los sacos referidos. Se anexan marcados con los núms. "17, 18- 19, 20, 21, 22 y 23 " los documentos a que se hace mención.

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XIII.- THE SPRAGUE & RHODES COMMODITY CORPORATION, con fecha - 26 de Septiembre de 1975, por conducto de su representante en esta Ciudad, Sr. ARMANDO GUZMAN VILLANUEVA, hizo entrega a mi mandante del Cheque No. - 005 librado a cargo del UNION NATIONAL BANK de Laredo, Tex. y a favor del- INSTITUTO MEXICANO DEL CAFE por la cantidad de 606,948.74 DLLS. (SEISCIENTOS SEIS MIL NOVECIENTOS CUARENTA Y OCHO 74/100 DOLARES AMERICANOS) como pago del adeudo Reclamado. Sin embargo dicho cheque fué devuelto por falta de fondos, agregándose una copia fotostática certificada por Notario Público, la que marcada con el No. "24" se agrega al presente ocurso.

ACLARO A SU SEÑORIA QUE LAS ACCIONES PENALES QUE PUEDAN DERIVAR SE DE ESTA OPERACION, ASI COMO LA QUE CORRESPONDE AL DELITO DE LIBRAMIENTO- DE CHEQUES SIN FONDOS , LAS RESERVO EN FORMA ESPECIAL PARA FORMULAR EN EL - MOMENTO OPORTUNO Y ANTE LAS AUTORIDADES COMPETENTES LAS DENUNCIAS PENALES - RESPECTIVAS.

XIV.- Cabe la aclaración que el Sr. ARMANDO GUZMAN VILLANUEVA - en lo individual y como representante de las Sociedades denominadas CAFES- DE LA FRONTERA, S.A. y COMPANIA MEXICANA DE REPRESENTACIONES AGSA, celebró- con mi mandante operaciones de compra-venta de café " consumo nacional " y que además, según se ha precisado en el cuerpo de esta demanda, celebró co- mo representante de THE SPRAGUE & RHODES COMMODITY CORPORATION, operaciones de compra-venta de "café calidad exportación". En vista de lo anterior y a- fin de precisar el adeudo derivado de la compra de " café consumo nacional" con fecha 16 de Febrero de 1976, el INSTITUTO MEXICANO DEL CAFE celebró con el SR. ARMANDO GUZMAN VILLANUEVA, un Convenio de Reconocimiento de Adeudo, - Ofrecimiento de Pago y Aceptación de Responsabilidad Solidaria, mismo que - se agrega al presente escrito marcado con el No. "25".



RECIBIDO
DE 12 CUBILLAS

XV.- En virtud de las múltiples gestiones extrajudiciales reali- zadas por mi mandante con la Sociedad denominada THE SPRAGUE & RHODES COMMO- DITY CORPORATION y con el SR. ARMANDO GUZMAN VILLANUEVA, como representante de dicha persona Moral, para lograr el pago del adeudo que se reclama y an- te la imposibilidad de lograr tal objetivo, me veo obligado a demandarlos - en forma conjunta y solidaria en la Vía y forma legal propuestas.

D E R E C H O

1.- Por cuanto al fondo del presente negocio son aplicables - las disposiciones contenidas en los artículos 1,2,3,13,14,75 Fracc. I, 78, 85,273,274,283,289,292,371,373,374,375,376,377,380,382,383,385,386 y demás relativos del Código de Comercio en vigor; así como los artículos 1987,1988, 1995,2002,2004,2062,2065,2068,2072,2073,2082,2104,2107,2108,2109,2110,2546,

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Hoja No. 7

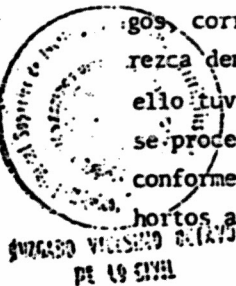
2547, 2548, 2552, 2560, 2568, 2584 y demás relativos del Código Civil del Distrito Federal, aplicado en toda la República en materia Federal.

2.- Normar el procedimiento lo establecido en los Artículos 1049, 1055 Fracc. I, 1056, 1060, 1061, 1063, 1066, 1069, 1073, 1074 y demás relativos del Código de Comercio en vigor.

3.- La competencia de ese H. Tribunal a su digno cargo para conocer del presente negocio se encuentra prevista en lo establecido por los Artículos 1090, 1091, 1106 y demás relativos del Código de Comercio; 156, Fracc. IV del Código de Procedimientos Civiles para el Distrito Federal, --- aplicado en forma supletoria al Código del Comercio.

4.- El pago de gastos y costas que se reclaman se encuentra reglamentado por los Artículos 1082 y 1083 del Código de Comercio.

En virtud de que la Sociedad THE SPRAGUE & RHODES COMMODITY CORPORATION tiene su domicilio en el No. 99 de la calle Wall Street, New York, N.Y. 10005 para los efectos de llevar a cabo el emplazamiento de dicha persona moral, solicito de su Señoría tenga a bien dirigir " CARTA ROGATORIA " al C. Juez competente de la Ciudad de New York, Estados Unidos de Norteamérica - con el objeto de exhortar a dicha autoridad para que en auxilio de las labores de este H. Tribunal a su digno cargo y seguro de reciprocidad en casos análogos, corra traslado de la presente demanda, emplazando al reo para que comparezca dentro de los términos de Ley a dar contestación a su demanda, si para ello tuviera excepciones legales que hacer valer. Para lo anterior solicito se proceda a la legalización de las firmas de los oficios correspondientes, conforme al procedimiento establecido en nuestras leyes para el envío de exhortos al extranjero.



Para los efectos de correr traslado de la presente demanda y proceder al emplazamiento de los demandados, deberá tomarse en cuenta que en virtud de que los documentos que se anexan al presente curso exceden de 25 fojas, los mismos deberán permanecer en la Secretaría de ese H. Tribunal a su digno cargo para que se instruyan las partes, según lo establecido en la Fracción III del Artículo 1061 del Código de Comercio.

Por lo anteriormente expuesto y fundado, A USTED C. JUEZ - ATENTAMENTE PIDO.

PRIMERO.- Tenerme por presentado con el presente escrito, testimonio de poder, anexos y copias simples que acompaño, demandando de la Empresa denominada THE SPRAGUE & RHODES COMMODITY CORPORATION y del -----

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PRIMERO.- Que el demandado, en su calidad de responsable patrimonial, el pago de las prestaciones que se le adeuden por este recurso.

SEGUNDO.- Que la parte demandada en la vía y forma legal por las, en su calidad de responsable patrimonial, el pago de las prestaciones que se le adeuden por este recurso, en la forma y forma nos establecidos en los preceptos legales correspondientes, a fin de que los recursos correspondientes a la misma dentro del término de ley, si para ello tuvieran excepciones legales que hacer valer.

TERCERO.- Dirigir Carta Rogatoria por duplicado a la siguiente entidad: "UNIVERSIDAD NACIONAL AUTÓNOMA DE MEXICO" en calidad de demandado, para que intervenga en el presente juicio, en la forma y forma nos establecidos por la fracción III, del Artículo 302 del Código Federal de Procedimientos Civiles aplicado en forma supletoria al Código de Comercio.

CUARTO.- Que el presente juicio a pruebas en el momento oportuno, a fin de que se pueda dar curso a las peticiones de las partes.

QUINTO.- En su oportunidad, de ser necesario, a fin de salvaguardar los intereses de mi mandante, concurriendo a la demanda a los recursos al pago de las prestaciones reclamadas en el cuerpo de este recurso.



SECRETARÍA DE JUSTICIA Y FALLO
EN LA CIVIL

SEXTO.- Tener por autorizados para que intervenga en el presente juicio a las personas designadas en el presente de esta demanda.

En la ciudad de México, D. F., a 15 de Mayo de 1976

PROFESOR DE DERECHO

1672

LIC. JUAN CARLOS VARGAS

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Department of Justice
City of the United
States of America.

INSTITUTO MEXICANO DEL CAFE,

Claimant,

-and-

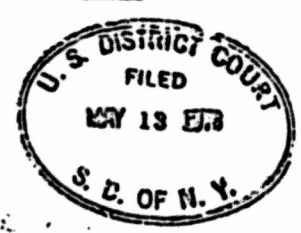
THE SPRAGUE AND RHODES COMMODITY CORPORATION
AND ARIANDO GUZMAN VILLANUEVA,

Respondents.
----- x

AFFIDAVIT

UNITED MEXICAN STATES }
FEDERAL DISTRICT }
CITY OF MEXICO }
EMBASSY OF THE UNITED }
STATES OF AMERICA }

SS.:



JORGE LEON ORANTES V., being duly sworn, says:

1. I am an attorney, duly admitted to practice under the laws of the Republic of Mexico and of the Federal District.

I am a partner in the firm of Goodrich, Dalton, Little & Riquelme, with offices at Paseo de la Reforma 355, Mexico 5, D.F.

2. I am Mexican counsel to Instituto Mexicano del Café. This affidavit is provided at the request of Instituto's New York counsel, Messrs. Silberfeld, Danziger & Bangser, in connection with the proceeding pending between Instituto and The Sprague and Rhodes Commodity Corporation and Armando Guzmán Villanueva.

3. Under the laws of the Republic of Mexico, the first notification or summons of the complaint to be served on respondents must be carried out through the Court Clerk of the Court knowing of the action, in the terms of Article 117 of the Code of Civil Procedures of the Federal District. In view of the foregoing it is not possible that this type of notifications be carried out through the attorneys of the parties or by any other person extraneous to the Court.

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4. In the terms of Article 1073 of the Code of Commerce
if the notification is to be served outside the Court's juris-
diction, the Court will send Letters Rogatory to the Court
of respondent's domicile to carry out said notification. There-
fore, it is advisable that the notification be carried out by
an official or employee of the Court of New York, N. Y., U.S.A.,
this form thereby being the same as the Mexican procedure.

C. León Crantes V.

Jorge León Crantes V.

Subscribed and sworn to before me
th 4 day of May, 1976.

Lana Chumley
LANA CHUMLEY
AMERICAN VICE CONSUL

A TRUE COPY
RAYMOND F. BURCHARDT, Clerk
By *R. F. Burchardt*
Deputy Clerk

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**F.O.B. CONTRACT
OF THE
GREEN COFFEE ASSOCIATION
OF
NEW YORK CITY, INC.
Effective August 1, 1968**

**THE SPRAGUE & RHODES COMMODITY CORP.
99 WALL STREET
NEW YORK, N. Y. 10005**

Contract Seller's No. _____

Buyer's No. _____

Date: _____

SELLER: SOLD for account of _____

BUYER: To _____

QUANTITY: About _____ (_____) Bags of _____ coffee
averaging _____ per bag.

PACKAGING: Coffee must be packed in bags of uniform size made of sisal, henequen, jute, burlap, or similar woven material, without inner lining or outer covering of any other material.

DESCRIPTION: _____

PRICE: At _____ U. S. Currency, per _____ net.

Free on board (F.O.B.) vessel at _____ export(s).

PAYMENT: _____

SHIPMENT: During/Per _____

from _____ export(s) to _____
by power-propelled vessel(s), by direct and or recognized indirect route. Partial shipments permitted. Date of on-board Bill of Lading to be evidence of time of shipment, but is not conclusive proof.

ADVISE OF SHIPMENT: Telegraphic advice of shipment with name of vessel in which coffee is on-board, together with the quantity, description, and port of destination, must be transmitted direct, or through Seller's Agent/Broker, to the buyer as soon as known, but not later than on the day of arrival of vessel at destination stated on Contract. Where Sellers and Buyers in the Contract are involved are in the same area, such advice may be given by hand, or verbally, or by telephone, with written confirmation to be sent the same day.

WEIGHTS: (1) DELIVERED WEIGHTS: Coffee covered by this contract is to be weighed at port of discharge. Any variation from invoice weights to be adjusted at contract price.

(2) SHIPPING WEIGHTS: Coffee covered by this contract is sold on shipping weights. Any loss in weight exceeding _____ percent at port of discharge is for account of Seller at contract price.

(3) Coffee is to be weighed within fifteen (15) calendar days after discharge of the coffee from vessel at port of discharge. Weighing expenses, if any, for account of buyer.

INSURANCE: All Marine and War Risk insurance to be covered by the Buyer.

MARKINGS: Bags to be branded in English with the name of country of origin and otherwise to comply with laws and regulations of U. S. Government, in effect at time of shipment, governing marking of import merchandise. Any expense incurred by failure to comply with these regulations to be borne by Seller.

DUTIES AND TAXES: Any duty or tax whatsoever, imposed by the United States Government, or any authority in the United States, shall be borne by the Buyer.

RULINGS: The "Ruling on Coffee Contracts" of the Green Coffee Association of New York City, Inc., in effect on the date this contract is made, are incorporated for all purposes as a part of this agreement, and together herewith, constitute the entire contract. No variation or addition hereto shall be valid unless signed by the parties to the contract.

Seller guarantees that the terms printed on the reverse hereof, which by reference are made a part hereof, are identical with the terms as printed in By-Laws and Rules of the Green Coffee Association of New York City, Inc., heretofore adopted. If No Pass-No Sale terms are stipulated, then Guarantee Clause (a) shall not be applicable.

Exceptions to this guarantee are:

ACCEPTED:

Buyer_____
SellerBY _____
AgentBY _____
Agent

When this contract is executed by a person acting for another, such person hereby represents that he is fully authorized to commit his principal.

EXHIBIT 3

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EXHIBIT 4

TERMS AND CONDITIONS

ARBITRATION:

All controversies relating to, in connection with, or arising out of this contract, its modification, making or the authority or obligations of the signatories hereto, and whether involving the principals, agents, brokers, or others who actually subscribe hereto, shall be settled by arbitration in accordance with the "Rules of Arbitration" of the Green Coffee Association of New York City, Inc., as they exist at the time of the arbitration (including provisions as to payment of fees and expenses). Arbitration is the sole remedy hereunder, and it shall be held in accordance with the law of New York State, and judgment of any award may be entered in any court of that State, or in any other court of competent jurisdiction. All notices or judicial service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforesaid rules.

GUARANTEE:

(a) If all or any of the coffee is refused admission into the United States by reason of any violation of the Federal Food, Drug and Cosmetic Act, which violation existed at the time the coffee arrived on board ship, seller is required, as to the amount not admitted and as soon as possible, to deliver replacement coffee in conformity to all the terms and conditions of this contract, excepting only the shipment terms. Any payment made for coffee denied entry shall be refunded within ten (10) calendar days of denial of entry, and payment shall be made for the replacement delivery in accordance with the terms of this contract. Consequently, if Buyer removes the coffee from the dock, Seller's responsibility as to such portion hereunder ceases.

(b) Contracts containing the over-stamp "No Pass—No Sale" on the face of the contract shall be interpreted to mean if any or all of the coffee is not admitted into the United States in its original condition by reason of failure to meet requirements of the Federal Food, Drug & Cosmetic Act, the contract shall be deemed to be null and void as to that portion of the coffee which is not admitted in its original condition. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry.

FORCE MAJEURE:

(a) Seller and Buyer shall not be liable for delay in delivery, or delay in the performance of other acts required hereunder, when solely resulting from cause(s) wholly beyond his control, provided coffee is at specified seaport ready for shipment. Such causes shall include, but not be limited to, acts of God, acts of government, wars, revolutions, strikes, pestilence, floods, droughts, perils of the sea, or unavoidable interruption of transportation. Notice to this effect shall be given in writing at once on contracts specifying shipment from seaport. In no case shall the seller be excused by any such causes intervening before the arrival of the affected portion of the coffee in the foreign port of original shipment.

(b) Force Majeure shall not apply when Seller's inability to export is due to Seller's lack of export quota.

CLAIMS:

Coffee shall be considered accepted as to quality, unless within fifteen (15) calendar days after discharge of the coffee from the vessel, either:

(a) Claims are settled by the parties hereto, or,

(b) Arbitration proceedings have been filed by one of the parties in accordance with the provisions hereof.

If neither has been done in the stated period, or if any chop or chops of the coffee has or have been removed from the dock before representative sealed samples have been drawn by the Green Coffee Association of New York City, Inc. in accordance with its rules, all claims as to quality regarding such chop or chops shall be unenforceable.

DELIVERY:

(a) No more than five (5) chops may be tendered for each lot of 250 bags.

(b) Each chop of coffee tendered is to be uniform in grade and appearance. All expense necessary to make coffee uniform shall be for account of seller.

INSOLVENCY OR FINANCIAL FAILURE OF BUYER OR SELLER:

If, at any time before the contract is fully executed, either party hereto shall meet with creditors because of inability generally to make payment of obligations when due, or shall suspend such payments, fail to meet his general trade obligations in the regular course of business, shall file a petition in bankruptcy or, for an arrangement, shall become insolvent, or commit an act of bankruptcy, then the other party may at his option, expressed in writing, declare the aforesaid to constitute a breach and default of this contract, and may, in addition to other remedies, decline to deliver further or make payment or may sell or purchase for the defaulter's account, and may collect damages for any injury or loss, or shall account for the profit, if any, occasioned by such sale or purchase.

BREACH OR DEFAULT OF CONTRACT:

In the event either party hereto fails to perform, or breaches or repudiates this agreement, the other party shall be entitled to the remedies and relief provided for by the uniform Commercial Code of the State of New York. The computation and ascertainment of damages, or the determination of any other dispute as to relief, shall be made by the arbitrators in accordance with the Arbitration Clause herein. Consequential damages shall not, however, be allowed.

IMPORT

1. J. Aron & Co., Inc.
2. A.C. & Leon Israel Co.
3. General Foods Corp.
4. Order

5. Armenia Coffee Corp.
6. Sprague & Rhodes Co.
7. Volkart Bros., Inc.
8. Nat. Fed. of Coffee Gr.
9. International Produce
10. Machado & Co., Inc.
11. Scholtz & Co., Inc.
12. Imperial Commodities
13. Lonray, Inc.
14. Anderson, Clayton &
15. Cofinco, Inc.

16. Gill & Duffus, Inc.
17. Saks International, Inc.
18. Suplicy Cacique Trade
19. Selcamerica, Inc.
20. Carl Borchsenius Co.,
21. Balzac Bros. & Co., Inc.
22. Socomex Coffee, Inc.
23. Jaime Rivas & Co.
24. Van Ekris & Stoett, Inc.
25. Greenwich Mills
26. Wm. L. Marshall Coffee
27. Mitsubishi International
28. E.P. Camilleri & Co.,
29. Mitsui & Co. (USA), Inc.
30. The East Asiatic Co., Inc.
31. Hillis Bros. Coffee, Inc.
32. J.A. Medina Div.
33. Columbian Coffee Co.
34. A.L. Ransuhoff Co., Inc.
35. S.F. Petlas Co., Inc.
36. E.A. Johnson Co., Inc.
37. The Nestle Co., Inc.

EXHIBIT 4

A 68

GREEN COFFEE ASSOCIATION OF NEW YORK CITY, INC.
182 FRONT STREET, NEW YORK, N. Y. 10038

ANNUAL SUMMARY OF GREEN COFFEE IMPORTS AT ATLANTIC COAST PORTS - JAN. 1 - DEC. 31, 1975

(BAGS OF ORIGINAL WEIGHT)

IMPORTERS	1 AFRICA	2 BRAZIL	3 COLOMBIA	4 PERU	5 PARA- GUAY	6 EL SALVA- DOR	7 COSTA RICA	8 GUATE- MALA	9 MEXICO	10 EQUA- DOR	11 NICAR- AGUA	12 HAITI	13 MON- DURAS	14 VENE- ZUELA	15 DOMINI- CAN REP.	16 INDIA	17 INDO- NESIA	MISC. COL.	TOTALS COLUMN	
1. J. Aron & Co., Inc.	434,650	672,483	51,479	43,309	-	20,661	500	13,285	200	44,800	50	4,000	1,500	-	13,510	500	5,087	(a) 773	1,306,767	1
2. A.C. & Leon Israel Coffee Co.	261,803	211,653	140,186	-	-	18,540	250	54,018	500	29,225	-	-	29,251	-	17,890	-	-	(b) 1,260	764,576	2
3. General Foods Corp.	564,673	2,500	96,280	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(c) 9,171	672,624	3
4. Order	328,352	-	127,810	45,638	-	-	11,000	4,685	-	1,880	-	5,422	500	-	1,258	2,877	23,162	(g) 1,251	559,194	4
																		(d) 1,020		
																		(e) 4,424		
																		(f) 125		
5. Armenia Coffee Corp.	500	-	300,828	31,750	-	4,500	-	-	-	36,658	-	-	750	-	1,000	-	-	-	375,986	5.
6. Sprague & Rhodes Commodity Corp.	11,895	34,075	74,287	33,427	-	2,500	958	-	150	34,074	-	19,921	42,755	14,986	34,805	5,366	42,738	-	351,937	6.
7. Volkart Bros., Inc.	35,890	29,748	115,764	-	-	35,077	500	35,440	2,000	12,500	-	-	-	16,750	-	11,867	13,491	-	309,027	7.
8. Nat. Fed. of Coffee Growers of Columbia	-	-	298,640	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	298,640	8.
9. International Produce Inc.	-	276,500	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	276,500	9.
10. Machado & Co., Inc.	-	49,750	89,406	2,535	-	1,500	-	4,318	5,000	7,000	1,178	-	10,941	48,260	52,835	-	-	-	272,723	10.
11. Scholtz & Co., Inc.	25,132	53,000	143,107	-	550	11,250	-	1,000	-	4,000	-	-	-	-	-	3,985	-	-	242,024	11.
12. Imperial Commodities Corp.	22,390	41,903	53,418	32,960	-	12,050	4,931	32,057	-	3,250	-	-	1,283	-	-	19,398	-	-	224,538	12.
13. Lonray, Inc.	88,539	2,500	-	9,250	-	9,375	-	13,700	3,750	54,330	-	-	-	-	-	6,270	15,720	(b) 7,146	210,580	13.
14. Anderson, Clayton & Co., Inc.	31,939	147,532	-	-	-	14,000	1,000	2,550	-	-	-	-	-	-	3,250	-	-	-	200,071	14.
15. Cofinco, Inc.	67,816	-	8,500	21,070	-	2,500	4,250	5,000	14,104	21,700	3,500	1,350	-	-	-	6,419	41,915	(f) 168	198,692	15.
																		(a) 400		
16. Gill & Duffus, Inc.	145,155	-	19,500	-	-	17,227	-	500	-	6,000	500	-	-	-	-	1,232	7,468	-	197,582	16.
17. Saks International, Inc.	104,612	4,000	10,750	-	-	-	-	250	-	-	-	1,500	-	-	1,500	-	68,881	-	191,493	17.
18. Suplicy Cacique Trading Co.	-	177,476	-	-	-	1,000	-	-	-	-	-	-	-	-	-	-	-	-	178,476	18.
19. Selcamerica, Inc.	167,879	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	167,879	19.
20. Carl Borchsenius Co., Inc.	8,059	27,487	500	-	-	46,500	-	26,813	54,621	-	-	-	-	-	500	-	-	-	164,480	20.
21. Balzac Bros. & Co., Inc.	-	129,400	7,415	-	-	2,000	-	3,365	-	-	538	1,880	-	-	16,704	-	-	-	161,302	21.
22. Socomex Coffee, Inc.	132,547	7,000	-	-	-	10,130	-	6,525	-	1,750	500	-	-	-	-	1,917	-	-	160,369	22.
23. Jaime Rivas & Co.	-	-	150,215	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	150,215	23.
24. Van Ekris & Stoett, Inc.	35,087	5,250	250	4,000	-	8,750	-	-	10,330	16,350	750	250	8,250	-	20,120	-	27,094	-	156,481	24.
25. Greenwich Mills	2,100	110,759	-	-	-	-	-	-	-	-	-	-	-	1,000	-	-	-	-	113,859	25.
26. Wm. L. Marshall Coffee Co.	-	71,150	18,300	-	-	5,000	-	8,050	362	-	-	-	-	-	-	-	-	-	102,862	26.
27. Mitsubishi International, Inc.	6,672	58,500	3,000	-	-	2,000	-	-	-	-	-	-	-	-	-	-	29,095	-	99,267	27.
28. E.P. Camilleri & Co., Inc.	94,772	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	94,772	28.
29. Mitsui & Co. (USA), Inc.	4,348	60,820	2,750	-	-	2,000	-	-	-	-	-	200	-	-	-	8,131	-	-	78,249	29.
30. The East Asiatic Co., Inc.	34,167	22,500	-	-	-	3,000	-	9,938	954	-	-	-	-	1,000	2,750	-	-	-	77,307	30.
31. Hill Bros. Coffee, Inc.	8,800	-	5,733	-	-	4,550	6,477	26,086	-	2,250	2,810	-	5,000	10,000	-	-	-	-	71,715	31.
32. J.A. Medina Div.	-	-	-	-	-	-	-	49,710	-	-	-	-	-	-	-	-	-	-	49,710	32.
33. Colombian Coffee Co., Inc.	-	-	48,071	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	48,071	33.
34. A.L. Rumschoff Co., Inc.	5,000	11,300	345	8,547	-	500	-	-	2,357	13,650	-	-	2,533	1,000	1,045	232	-	(a) 2,000	46,600	34.
35. S.F. Pollas Co., Inc.	1,668	-	14,830	-	-	17,832	-	3,823	-	-	200	-	-	-	-	-	-	-	38,353	35.
36. E.A. Johnson Co., Inc.	-	-	-	-	-	21,892	-	3,725	-	-	-	-	-	-	-	-	6,568	-	37,185	36.
37. The Nestle Co., Inc.	2,425	11,750	-	-	-	-	-	-	-	-	-	-	-	-	-	2,025	-	(h) 3,802	30,067	37.
																		(i) 2,050		

A 69

RODOLFO GAITAN-ROJO
U. S. INTERNATIONAL REPRESENTATIVE

MEXICAN COFFEE INSTITUTE
3 WEST 57TH STREET 9TH FLOOR
NEW YORK, N. Y. 10019 (212) 753-4105

JESUS RODRIGUEZ
ADMINISTRATIVE OFFICER

MEXICAN COFFEE INSTITUTE
3 WEST 57TH STREET 9TH FLOOR
NEW YORK, N. Y. 10019 (212) 753-4105

EXHIBIT 5

A 70

**J.B. CONTRACT
OF THE
GREEN COFFEE ASSOCIATION
OF
NEW YORK CITY, INC.
Effective August 1, 1968**

**THE SPRAGUE & RHODES COMMODITY CORP.
99 WALL STREET
NEW YORK, N. Y. 10005**

Contract Seller's No. _____

Buyer's No. 1006

SELLER: SOLD for account of Beneficios Mexicanos de Cafe, S. de R.L. & C.V., Apartado Postal No. 27285, Mexico 11, D.F., Mexico.
BUYER: To THE SPRAGUE & RHODES COMM. CORP., 99 Wall Street, New York, N.Y. 10005.

QUANTITY: About Three Hundred Ninety BAGS 390 Bags Mexican coffee
averaging 152 lbs. per bag. XXXX

PACKAGING: Coffee must be packed in bags of uniform size made of sisal, henequen, jute, burlap, or similar woven material, without inner lining or outer covering of any other material.

DESCRIPTION: Washed Standard Mexican, as per sample.

PRICE: Forty One & Three Quarter Cents (41-3/4¢) U. S. Currency, per Pound net.
Free on board (F.O.B.) vessel at Mexican East Coast seaport(s).

PAYMENT: By L/C thru BANCO NACIONAL DE COMERCIO EXTERIOR, Mexico City, on first presentation of a full set of clean On Board ocean steamer B's/L, signed commercial invoice in triplicate & properly authenticated Certificates of Origin in duplicate, in accordance with ICO (*)

SHIPMENT: During/Per Immediate
from Mexican seaport(s) to NEW YORK, N.Y.
by power-propelled vessel(s), by direct and or recognized indirect route. Partial shipments permitted. Date of on-board Bill of Lading to be evidence of time of shipment, but is not conclusive proof.

ADVICE OF SHIPMENT: Telegraphic advice of shipment with name of vessel in which coffee is on-board, together with the quantity, description, and port of destination, must be transmitted direct, or through Seller's Agent/Broker, to the buyer as soon as known, but not later than the day of arrival of vessel at destination stated on Contract. Where Sellers and Buyers in the Contract involved are in the same area, such advice may be given by hand, or verbally, or by telephone, with written confirmation to be sent the same day.

WEIGHTS: (1) DELIVERED WEIGHTS
(2) SHIPPING WEIGHTS: Coffee covered by this contract is sold on shipping weights. Any loss in weight exceeding 1/2% percent at port of discharge is for account of Seller at contract price.
(3) Coffee is to be weighed within fifteen (15) calendar days after discharge of the coffee from vessel at port of discharge. Weighing expenses, if any, for account of buyer.

INSURANCE: All Marine and War Risk insurance to be covered by the Buyer.

MARKINGS: Bags to be branded in English with the name of country of origin and otherwise to comply with laws and regulations of U. S. Government, in effect at time of shipment, governing marking of import merchandise. Any expense incurred by failure to comply with these regulations to be borne by Seller.

DUTIES AND TAXES: Any duty or tax whatsoever, imposed by the United States Government, or any authority in the United States, shall be borne by the Buyer.

RULINGS: The "Ruling on Coffee Contracts" of the Green Coffee Association of New York City, Inc., in effect on the date this contract is made, are incorporated for all purposes as a part of this agreement and together herewith, constitute the entire contract. No variation or addition hereto shall be valid unless signed by the parties to the contract.
Seller guarantees that the terms printed on the reverse hereof, which by reference are made a part hereof, are identical with the terms as printed in By-Laws and Rules of the Green Coffee Association of New York City, Inc., heretofore adopted. If No Pass-No Sale terms are stipulated, then Guarantee Clause (a) shall not be applicable.

Exceptions to this guarantee are:

(*) Regulations prevailing at time of shipment.

ACCEPTED:
THE SPRAGUE & RHODES COMM. CORP.

BY John Sloan
Agent

**BENEFICIOS MEXICANOS DE
CAFE, S de R.L. & C.V.**

BY Carlton
Seller

When this contract is executed by a person acting for another, such person hereby represents that he is fully authorized to commit his principal.

EXHIBIT 6

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TERMS AND CONDITIONS

- ARBITRATION:** All controversies relating to, in connection with, or arising out of this contract, its modification, making or the authority or obligations of the signatories hereto, and whether involving the principals, agents, brokers, or others who actually subscribe hereto, shall be settled by arbitration in accordance with the "Rules of Arbitration" of the Green Coffee Association of New York City, Inc., as they exist at the time of the arbitration (including provisions as to payment of fees and expenses). Arbitration is the sole remedy hereunder, and it shall be held in accordance with the law of New York State, and judgment of any award may be entered in the courts of that State, or in any other court of competent jurisdiction. All notices or judicial service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforesaid rules.
- GUARANTEE:** (a) If all or any of the coffee is refused admission into the United States by reason of any violation of the Federal Food, Drug and Cosmetic Act, which violation existed at the time the coffee arrived on board ship, seller is required, as to the amount not a limited and as soon as possible, to deliver replacement coffee in conformity to all the terms and conditions of this contract, excepting only the shipment terms. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry, and payment shall be made for the replacement delivery in accordance with the terms of this contract. Consequently, if buyer removes the coffee from the dock, Seller's responsibility as to such portion hereunder ceases.
- (b) Contracts containing the overstamp "No Pass—No Sale" on the face of the contract shall be interpreted to mean: If any or all of the coffee is not admitted into the United States in its original condition by reason of failure to meet requirements of the Federal Food, Drug & Cosmetic Act, the contract shall be null and void as to that portion of the coffee which is not admitted in its original condition. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry.
- FORCE MAJEURE:** (a) Seller and Buyer shall not be liable for delay in delivery, or delay in the performance of other acts required hereunder, when solely resulting from cause(s) wholly beyond his control, provided coffee is at specified seaport ready for shipment. Such causes shall include, but not be limited to, acts of God, acts of government, wars, revolutions, strikes, pestilence, floods, droughts, perils of the sea, or unavoidable interruption of transportation. Notice to this effect shall be given in writing at once on contracts specifying shipment from seaport. In no case shall the seller be excused by any such causes intervening before the arrival of the affected portion of the coffee in the foreign port of original shipment.
- (b) Force Majeure shall not apply when Seller's inability to export is due to Seller's lack of export quota.
- CLAIMS:** Coffee shall be considered accepted as to quality, unless within fifteen (15) calendar days after discharge of the coffee from the vessel, either:
- (a) Claims are settled by the parties hereto, or,
- (b) Arbitration proceedings have been filed by one of the parties in accordance with the provisions hereof.
- If neither has been done in the stated period, or if any chop or chops of the coffee has or have been removed from the dock before representative sealed samples have been drawn by the Green Coffee Association of New York City, Inc. in accordance with its rules, all claims as to quality regarding such chop or chops shall be unenforceable.
- DELIVERY:** (a) No more than five (5) chops may be tendered for each lot of 250 bags.
- (b) Each chop of coffee tendered is to be uniform in grade and appearance. All expense necessary to make coffee uniform shall be for account of seller.
- INSOLVENCY OR FINANCIAL FAILURE OF BUYER OR SELLER:** If, at any time before the contract is fully executed, either party hereto shall meet with creditors because of inability generally to make payment of obligations when due, or shall suspend such payments, fail to meet his general trade obligations in the regular course of business, shall file a petition in bankruptcy or, for an arrangement, shall become insolvent, or commit an act of bankruptcy, then the other party may at his option, expressed in writing, declare the aforesaid to constitute a breach and default of this contract, and may, in addition to other remedies, decline to deliver further or make payment or may sell or purchase for the defaulter's account, and may collect damages for any injury or loss, or shall account for the profit, if any, occasioned by such sale or purchase.
- BREACH OR DEFAULT OF CONTRACT:** In the event either party hereto fails to perform, or breaches or repudiates this agreement, the other party shall be entitled to the remedies and relief provided for by the uniform Commercial Code of the State of New York. The computation and ascertainment of damages, or the determination of any other dispute as to relief, shall be made by the arbitrators in accordance with the Arbitration Clause herein.
- Consequential damages shall not, however, be allowed.

A. 72

Contract Seller's No. _____

Buyer's No. 5307

Date July 15, 1975

QUANTITY: About Two Thousand BAGS (2,000) Bags of Mexican coffee
averaging 152 lbs. per bag. XXXXXX

DESCRIPTION: Prime Washed Chiapas Mexican, New Crop, fresh green coffee

PAYMENT: Against sight draft accompanied by a full set of clean "On Board"
Bl's/L & signed commercial invoice in triplicate by telegraphic
transfer to Banco de Comercio Exterior, S.A., a/c No. 172
Manuel Penagos Lara, Mexico

from Origin varrort/sb40 Laredo Texas

ADVICE OF SHIPMENT: Telegraphic advice of shipment with name of vessel in which coffee is on-board, together with the quantity, description, and port of destination, must be transmitted direct, or through Seller's Agent/Broker, to the buyer as soon as known, but not later than on the day of arrival of vessel at destination stated on Contract. Where Sellers and Buyers in the Contracts involved are in the same area, such advice may be given by hand, or verbally, or by telephone, with written confirmation to be sent the same day.

WEIGHTS:

(1) **DELIVERED WEIGHTS:** Coffee covered by this contract is to be weighed at port of discharge. Any variation from invoice weights to be adjusted at contract price.

(2) **SHIPPING WEIGHTS:** Coffee covered by this contract is sold on shipping weights. Any loss in weight exceeding

Contract No.: 5307

SPRAGUE & RHODES to pay 25¢ per bag commission to:

Compania Mexicana de Rep., A.G.S.A.

comply with laws and regulations of merchandise. Any expense incurred by

Authority in the United States, shall be

7, Inc., in effect on the date this contract herewith, constitute the entire of the contract.

are made a part hereof, are identical of New York City, Inc., heretofore not be applicable.

See attached for additional clauses regarding this contract.

ACCEPTED:

~~THE SPRAGUE & RHODES COMM. CORP.~~

~~MANUEL PENAGOS LARA~~

BY _____

BY _____

When this contract is executed by a person acting for another, such person hereby represents that he is fully authorized to commit his principal.

EXHIBIT 7

A 73

TERMS AND CONDITIONS

ARBITRATION:

All controversies relating to, in connection with, or arising out of this contract, its modification, making or the authority or obligations of the signatories hereto, and all other involving the principals, agents, brokers, or others who actually subscribe hereto, shall be settled by arbitration in accordance with the "Rules of Arbitration" of the Green Coffee Association of New York City, Inc., as they exist at the time of the arbitration (including provisions as to payment of fees and expenses). Arbitration is the sole remedy hereunder, and it shall be held in accordance with the law of New York State, and judgment of any award may be entered in the courts of that State, or in any other court of competent jurisdiction. All notices or judicial service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforesaid rules.

GUARANTEE:

(a) If all or any of the coffee is refused admission into the United States by reason of any violation of the Federal Food, Drug and Cosmetic Act, which violation existed at the time the coffee arrived on board ship, seller is required, as to the amount not admitted and as soon as possible, to deliver replacement coffee in conformity to all the terms and conditions of this contract, excepting only the shipment terms. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry, and payment shall be made for the replacement delivery in accordance with the terms of this contract. Consequently if the coffee is removed from the dock, Seller's responsibility as to such portion hereunder ceases.

(b) Contracts containing the overstamp "No Further Sale" on the face of the contract shall be interpreted to mean. If any or all of the coffee is not admitted into the United States in its original condition by reason of failure to meet requirements of the Federal Food, Drug & Cosmetic Act, the contract shall be deemed to be null and void as to that portion of the coffee which is not admitted in its original condition. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry.

FORCE MAJEURE:

(a) Seller and Buyer shall not be liable for delay in delivery, or delay in the performance of other acts required hereunder, when solely resulting from cause(s) wholly beyond their control, provided coffee is at specified seaport ready for shipment. Such causes shall include, but not be limited to, acts of God, acts of government, wars, revolutions, strikes, pestilence, floods, droughts, perils of the sea, or unavoidable interruption of transportation. Notice to this effect shall be given in writing at once on contracts specifying shipment from seaport. In no case shall the seller be excused by any such causes intervening before the arrival of the affected portion of the coffee in the foreign port of original shipment.

(b) Force Majeure shall not apply when Seller's inability to export is due to Seller's lack of export quota.

CLAIMS:

Coffee shall be considered accepted as to quality, unless within fifteen (15) calendar days after discharge of the coffee from the vessel, either:

(a) Claims are settled by the parties hereto, or,

(b) Arbitration proceedings have been filed by one of the parties in accordance with the provisions hereof.

If neither has been done in the stated period, or if any chop or chops of the coffee has or have been removed from the dock before representative sealed samples have been drawn by the Green Coffee Association of New York City, Inc. in accordance with its rules, all claims as to quality regarding such chop or chops shall be unenforceable.

DELIVERY:

(a) No more than five (5) chop may be tendered for each lot of 250 bags.

(b) Each chop of coffee tendered is to be uniform in grade and appearance. All expense necessary to make coffee uniform shall be for account of seller.

INSOLVENCY OR FINANCIAL FAILURE OF BUYER OR SELLER:

If, at any time before the contract is fully executed, either party hereto shall meet with creditors because of inability generally to make payment of obligations when due, or shall suspend such payments, fail to meet his general trade obligations in the regular course of business, shall file a petition in bankruptcy or, for an arrangement, shall become insolvent, or commit an act of bankruptcy, then the other party may at his option, expressed in writing, declare the aforesaid to constitute a breach and default of this contract, and may, in addition to other remedies, decline to deliver further or make payment or may sell or purchase for the defaulter's account, and may collect damage for any injury or loss, or shall account for the profit, if any, occasioned by such sale or purchase.

BREACH OR DEFAULT OF CONTRACT:

In the event either party hereto fails to perform, or breaches or repudiates this agreement, the other party shall be entitled to the remedies and relief provided for by the uniform Commercial Code of the State of New York. The computation and ascertainment of damages, or the determination of any other dispute as to relief, shall be made by the arbitrators in accordance with the Arbitration Clause herein.

Consequential damages shall not, however, be allowed.

F.O.B. CONTRACT
OF THE
GREEN COFFEE ASSOCIATION
OF
NEW YORK CITY, INC.
Effective August 1, 1968

SPRAGUE & RHODES COMMODITY CORP.
89 WALL STREET
NEW YORK, N. Y. 10003

Contract Seller's No. _____

Buyer's No. 5437-F

Date July 30, 1975

SELLER: SOLD for account of Instituto Mexicano Del Cafe
Avenida Insurgentes Sur No. 421-B, Mexico 11, Mexico
THE SPRAGUE & RHODES COMM. CORP.,
TO: 99 Wall Street, New York, N.Y. 10005

QUANTITY: About Three Thousand BAGS (3,000) Bags of Mexican coffee
averaging 152 lbs. per bag. XXXXX

PACKAGING: Coffee must be packed in bags of uniform size made of sisal, henequen, jute, burlap, or similar woven material, without inner lining or outer covering of any other material.

DESCRIPTION: Prime Washed Mexican coffee, New Crop.
Subject to buyer's approval of sample prior to shipment.

PRICE: At Eighty Cents (80¢) U. S. Currency, per pound—net.
Free on board (F.O.B.) ~~XXXXX~~ Laredo

DOCUMENT: Against sight draft accompanied by a full set of clean "On Board"
ocean steamer B/L, signed commercial invoice in triplicate and
properly authenticated Certificates of Origin in duplicate, in
accordance with ICO Regulations prevailing at time of shipment.

SHIPMENT: During/Per August/September 1975
from Origin (seaport(s) to Laredo, Texas
by power propelled vessel(s), by direct and/or recognized indirect route. Partial shipments permitted. Date of on-board bill of lading to be evidence of time of shipment, but is not conclusive proof.

ADVISE OF SHIPMENT: Telegraphic advice of shipment with name of vessel in which coffee is on-board, together with the quantity, description, and port of destination, must be transmitted direct, or through Seller's Agent/Broker, to the buyer as soon as known, but not later than on the day of arrival of vessel at destination stated on Contract. Where Sellers and Buyers in the Contracts involved are in the same area, such advice may be given by hand, or verbally, or by telephone, with written confirmation to be sent the same day.

WEIGHTS: (1) DELIVERED WEIGHTS: Coffee covered by this contract is to be weighed at port of discharge. Any variation from invoice weights to be adjusted at contract price.

Contract is sold on shipping weights. Any loss in weight exceeding amount of Seller at contract price.
Days after discharge of the coffee from vessel at port of discharge.

Contract No.: 5437-F

SPRAGUE & RHODES to pay 25¢ per bag

commission to:

A. Guzman

Buyer.
of origin and otherwise to comply with laws and regulations of
marking of import merchandise. Any expense incurred by
Seller.
Government, or any authority in the United States, shall be
association of New York City, Inc., in effect on the date this con-
of this agreement, and together herewith, constitute the entire
ness signed by the parties to the contract.
hereof, which by reference are made a part hereof, are identical
Green Coffee Association of New York City, Inc., heretofore
Guarantee Clause (a) shall not be applicable.

See attached for additional clauses regarding this contract.

ACCEPTED:

THE SPRAGUE & RHODES COMM. CORP. INSTITUTO MEXICANO DEL CAFE
BY _____ Buyer
BY _____ Agent

When this contract is executed by a person acting for another, such person hereby represents that he is fully authorized

EXHIBIT 8

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TERMS AND CONDITIONS

ARBITRATION:

All controversies relating to, in connection with, or arising out of this contract, its modification, making or the authority or obligations of the signatories hereto, and including involving the principals, agents, brokers, or others who actually subscribe hereto, shall be settled by arbitration in accordance with the "Rules of Arbitration" of the Green Coffee Association of New York City, Inc., as they exist at the time of the arbitration (including provisions as to payment of fees and expenses). Arbitration is the sole remedy hereunder, and it shall be held in accordance with the law of New York State, and judgment of any award may be entered in the courts of that State, or in any other court of competent jurisdiction. All notices or judicial service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforesaid rules.

GUARANTEE:

(a) If all or any of the coffee is refused admission into the United States by reason of any violation of the Federal Food, Drug and Cosmetic Act, which violation exists at the time the coffee arrived on board ship, seller is required, as to the amount not admitted and as soon as possible, to deliver replacement coffee in conformity to all the terms and conditions of this contract, excepting only the shipment terms. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry, and payment shall be made for the replacement delivery in accordance with the terms of this contract. Consequently, if Buyer removes the coffee from the dock, Seller's responsibility as to such portion hereunder ceases.

(b) Contracts containing the overstamp "No Pass - No Sale" on the face of the contract shall be interpreted to mean If any or all of the coffee is not admitted into the United States in its original condition by reason of failure to meet requirements of the Federal Food, Drug & Cosmetic Act, the contract shall be deemed to be null and void as to that portion of the coffee which is not admitted in its original condition. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry.

FORCE MAJEURE:

(a) Seller and Buyer shall not be liable for delay in delivery, or delay in the performance of other acts required hereunder, when solely resulting from cause(s) wholly beyond his control, provided coffee is at specified seaport ready for shipment. Such causes shall include, but not be limited to, acts of God, acts of government, wars, revolutions, strikes, pestilence, floods, droughts, perils of the sea, or unavoidable interruption of transportation. Notice to this effect shall be given in writing at once on contracts specifying shipment from seaport. In no case shall the seller be excused by any such causes intervening before the arrival of the affected portion of the coffee in the foreign port of original shipment.

(b) Force Majeure shall not apply when Seller's inability to export is due to Seller's lack of export quota.

CLAIMS:

Coffee shall be considered accepted as to quality, unless within fifteen (15) calendar days after discharge of the coffee from the vessel, either:

(a) Claims are settled by the parties hereto, or

(b) Arbitration proceedings have been filed by one of the parties in accordance with the provisions hereof.

If neither has been done in the stated period, or if any chop or chops of the coffee has or have been removed from the dock before representative sealed samples have been drawn by the Green Coffee Association of New York City, Inc. in accordance with its rules, all claims as to quality regarding such chop or chops shall be unenforceable.

DELIVERY:

(a) No more than five (5) chops may be tendered for each lot of 250 bags.

(b) Each chop of coffee tendered is to be uniform in grade and appearance. All expense necessary to make coffee uniform shall be for account of seller.

INSOLVENCY OR FINANCIAL FAILURE OF BUYER OR SELLER:

If, at any time before the contract is fully executed, either party hereto shall meet with creditors because of inability generally to make payment of obligations when due, or shall stop or suspend such payments, fail to meet his general trade obligations in the regular course of business, shall file a petition in bankruptcy or, for an arrangement, shall become insolvent, or commit an act of bankruptcy, then the other party may at his option, expressed in writing, declare the aforesaid to constitute a breach and default of this contract, and may, in addition to other remedies, decline to deliver further or make payment or may sell or purchase for the defaulter's account, and may collect damage for any injury or loss, or shall account for the profit, if any, occasioned by such sale or purchase.

BREACH OR DEFAULT OF CONTRACT:

In the event either party hereto fails to perform, or breaches or repudiates this agreement, the other party shall be entitled to the remedies and relief provided for by the uniform Commercial Code of the State of New York. The computation and ascertainment of damages, or the determination of any other dispute as to relief, shall be made by the arbitrators in accordance with the Arbitration Clause herein. Consequential damages shall not, however, be allowed.

**F.O.B. CONTRACT
OF THE
GREEN COFFEE ASSOCIATION
OF
NEW YORK CITY, INC.**
Effective August 1, 1968

**THE SPRAGUE & RHODES COMMODITY L
99 WALL STREET
NEW YORK, N. Y. 10033**

Contract Seller's No. _____

Buyer's No. 5481

Date August 6, 1975

SELLER: SOLD for account of INSTITUTO MEXICANO DEL CAFE, Avenida Insurgentes Sur
No. 421-B, Mexico 11, D.F., Mexico.
BUYER: To THE SPRAGUE & RHODES COMMODITY CORP.,
99 Wall Street, New York, New York. (10005)

QUANTITY: About One Thousand BAGS (1,000) Bags of Mexican coffee
averaging 152 lbs. per bag.

PACKAGING: Coffee must be packed in bags of uniform size made of sisal, henequen, jute, burlap, or similar woven material, without inner lining or outer covering of any other material.

DESCRIPTION: Prime Washed "Chiapas" Mexican coffee.

PRICE: At Seventy Nine & One Half Cents (79-1/2¢) U. S. Currency, per Pound net.
Free on board (F.O.B.) Laredo

PAYMENT: Against sight draft accompanied by a full set of clean "On Board"
XXXXXX B's/L, signed commercial invoice in triplicate and
properly authenticated Certificates of Origin in duplicate, in
accordance with I Regulations prevailing at time of shipment.

SHIPMENT: During/Per Prompt
from Origin Laredo, Texas.
XXXXXX by direct and/or recognized indirect route. Partial shipments permitted. Date of on-board Bill of Lading to be evidence of time of shipment, but is not conclusive proof.

ADVISE OF SHIPMENT: Telegraphic advice of shipment with name of vessel in which coffee is on-board, together with the quantity, description, and port of destination, must be transmitted direct, or through Seller's Agent/Broker, to the buyer as soon as known, but not later than on the day of arrival of vessel at destination stated on Contract. Where Sellers and Buyers in the Contract involved are in the same area, such advice may be given by hand, or verbally, or by telephone, with written confirmation to be sent the same day.

WEIGHTS: (1) DELIVERED WEIGHTS: Coffee covered by this contract is to be weighed at port of discharge. Any variation from invoice weights to be adjusted at contract price.
(2) SHIPPING WEIGHTS: Coffee covered by this contract is sold on shipping weights. Any loss in weight exceeding 1/2% percent at port of discharge is for account of Seller at contract price.
(3) Coffee is to be weighed within fifteen (15) calendar days after discharge of the coffee from vessel at port of discharge. Weighing expenses, if any, for account of buyer.

INSURANCE: All Marine and War Risk insurance to be covered by the Buyer.
MARKINGS: Bags to be branded in English with the name of country of origin and otherwise to comply with laws and regulations of shipment, governing marking of import merchandise. Any expense incurred by be borne by Seller.

no Contract No.: 5481
the United States Government, or any authority in the United States, shall be

Green Coffee Association of New York City, Inc., in effect on the date this contract as a part of this agreement, and together herewith, constitute the entire shall be valid unless signed by the parties to the contract
the reverse hereof, which by reference are made a part hereof, are identical
Rules of the Green Coffee Association of New York City, Inc., heretofore
plated, then Guarantee Clause (a) shall not be applicable

PRAGUE & RHODES to pay 25¢ per
bag commission to:

Ermando Guzman Villanueva.

CLAUSES REGARDING THIS CONTRACT.

ACCEPTED:
THE SPRAGUE & RHODES COM. CORP.

BY B Buyer
Agent

INSTITUTO MEXICANO DEL CAFE
Seller

BY _____ Agent

When this contract is executed by a person acting for another, such person hereby represents that he is fully authorized to commit his principal.

EXHIBIT 9

A. 77

TERMS AND CONDITIONS

ARBITRATION:

All controversies relating to, in connection with, or arising out of this contract, its modification, making or the authority or obligations of the signatories hereto, and whether involving the principals, agents, brokers, or others who actually subscribe hereto, shall be settled by arbitration in accordance with the "Rules of Arbitration" of the Green Coffee Association of New York City, Inc., as they exist at the time of the arbitration (including provisions as to payment of fees and expenses). Arbitration is the sole remedy hereunder, and it shall be held in accordance with the law of New York State, and judgment of any award may be entered in the courts of that State, or in any other court of competent jurisdiction. All notices or judicial service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforesaid rules.

GUARANTEE:

(a) If all or any of the coffee is refused admission into the United States by reason of any violation of the Federal Food, Drug and Cosmetic Act, which violation existed at the time the coffee arrived on board ship, seller is required, as to the amount not admitted and as soon as possible, to deliver replacement coffee in conformity to all the terms and conditions of this contract, excepting only the shipment terms. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry, and payment shall be made for the replacement delivery in accordance with the terms of this contract. Consequently, if Buyer removes the coffee from the dock, Seller's responsibility as to such portion hereunder ceases.

(b) Contracts containing the overstamp "No Pass-No Sale" on the face of the contract shall be interpreted to mean: If any or all of the coffee is not admitted into the United States in its original condition by reason of failure to meet requirements of the Federal Food, Drug & Cosmetic Act, the contract shall be deemed to be null and void as to that portion of the coffee which is not admitted in its original condition. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry.

FORCE MAJEURE:

(a) Seller and Buyer shall not be held liable for non-performance of either party required hereunder, when solely resulting from causes wholly beyond their control, provided coffee is at specified seaport ready for shipment. Such causes shall include, but not be limited to, acts of God, acts of government, wars, revolutions, strikes, pestilence, floods, droughts, perils of the sea, or unavoidable interruption of transportation. Notice to this effect shall be given in writing at once on contracts specifying shipment from seaport. In no case shall the seller be excused by any such causes intervening before the arrival of the affected portion of the coffee in the foreign port of original shipment.

(b) Force Majeure shall not apply when Seller's inability to export is due to Seller's lack of export quota.

CLAIMS:

Coffee shall be considered accepted as to quality, unless within fifteen (15) calendar days after discharge of the coffee from the vessel, either:

(a) Claims are settled by the parties hereto, or,

(b) Arbitration proceedings have been filed by one of the parties in accordance with the provisions hereof.

If neither has been done in the stated period, or if any chop or chops of the coffee has or have been removed from the dock before representative sealed samples have been drawn by the Green Coffee Association of New York City, Inc. in accordance with its rules, all claims as to quality regarding such chop or chops shall be unenforceable.

DELIVERY:

(a) No more than five (5) chops may be tendered for each lot of 250 bags.

(b) Each chop of coffee tendered is to be uniform in grade and appearance. All expense necessary to make coffee uniform shall be for account of seller.

INSOLVENCY OR FINANCIAL FAILURE OF BUYER OR SELLER:

If, at any time before the contract is fully executed, either party hereto shall meet with creditors because of inability generally to make payment of obligations when due, or shall suspend such payments, fail to meet his general trade obligations in the regular course of business, shall file a petition in bankruptcy or, for an arrangement, shall become insolvent, or commit an act of bankruptcy, then the other party may at his option, expressed in writing, declare the aforesaid to constitute a breach and default of this contract, and may, in addition to other remedies, decline to deliver further or make payment or may sell or purchase for the defaulter's account, and may collect damages for any injury or loss, or shall account for the profit, if any, occasioned by such sale or purchase.

BREACH OR DEFAULT OF CONTRACT:

In the event either party hereto fails to perform, or breaches or repudiates this agreement, the other party shall be entitled to the remedies and relief provided for by the uniform Commercial Code of the State of New York. The computation and ascertainment of damages, or the determination of any other dispute as to relief, shall be made by the arbitrators in accordance with the Arbitration Clause herein. Consequential damages shall not, however, be allowed.

**F.O.B. CONTRACT
OF THE
GREEN COFFEE ASSOCIATION
OF
NEW YORK CITY, INC.
Effective August 1, 1968**

**THE SPRAGUE & RHODES COMMODITY
99 WALL STREET
NEW YORK, N. Y. 10005**

Contract Seller's No. _____

Buyer's No. 5491

Date August 15, 1975

CAPES DE LA FRONTERA, S.A.

SELLER: SOLD for Mexico, D.F., Mexico
BUYER: To THE SPRAGUE & RHODES COMMODITY CORP.,
99 Wall Street, New York, N.Y. 10005

QUANTITY: About Two Thousand bags (2,000) Bags of Mexican coffee
averaging 152 lbs. per bag.

PACKAGING: Coffee must be packed in bags of uniform size made of sisal, henequen, jute, burlap, or similar woven material, without inner lining or outer covering of any other material.

DESCRIPTION: Prime Washed Mexican coffee
Subject to approval of samples; no approval, no sale.

PRICE: At Seventy eight Cents (78.00¢) U. S. Currency, per pound net.

PAYMENT: For on board (F.O.B.) immediate instore at Laredo, Texas
Against sight draft accompanied by a full set of clean "On Board"
B's/L and signed commercial invoice in triplicate.

SHIPMENT: During/Per About to cross the Border, for delivery in store at Laredo**
from Origin (responsibility) to in Store Laredo, Texas
by direct and/or recognized indirect route. Partial shipments permitted. Date of on-board
Bull of Lading to be evidence of time of shipment, but is not conclusive proof.

ADVICE OF SHIPMENT: Telegraphic advice of shipment with name of vessel in which coffee is on-board, together with the quantity, description, and port of destination must be transmitted direct, or through Seller's Agent/Broker, to the buyer as soon as known, but not later than on the day of arrival of vessel at destination stated on Contract. Where Sellers and Buyers in the Contracts involved are in the same area, such advice may be given by hand, or verbally, or by telephone, with written confirmation to be sent the same day.

WEIGHTS: (1) DELIVERED WEIGHTS: Coffee covered by this contract is to be weighed at port of discharge. As a condition of
invoice weights to be adjusted at contract price.

(2) SHIPPING WEIGHTS: Coffee covered by this contract is sold on shipping weights. Any loss in weight exceeding
1/2% percent at port of discharge is for account of Seller at contract price.

(3) Coffee is to be weighed within fifteen (15) calendar days after discharge of the coffee from vessel at port of discharge.
Weighing expenses, if any, for account of buyer.

INSURANCE: All Marine and War Risk insurance to be covered by the Buyer.

MARKINGS: Bags to be branded in English with the name of country of origin and otherwise to comply with laws and regulations of U. S. Government, in effect at time of shipment, governing marking of import merchandise. Any expense incurred by failure to comply with these regulations to be borne by Seller.

DUTIES AND TAXES: Any duty or tax whatsoever, imposed by the United States Government, or any authority in the United States, shall be borne by the Buyer.

RULINGS: The "Ruling on Coffee Contracts" of the Green Coffee Association of New York City, Inc., in effect on the date this contract is made, are incorporated for all purposes as a part of this agreement, and, together herewith, constitute the entire contract. No variation or addition hereto shall be valid unless signed by the parties to the contract. Seller guarantees that the terms printed on the reverse hereof, which by reference are made a part hereof, are identical with the terms as printed in By-Laws and Rules of the Green Coffee Association of New York City, Inc., heretofore adopted. If No Pass-No Sale terms are stipulated, then Guarantee Clause (a) shall not be applicable. Exceptions to this guarantee are:

**** All storage charges for account of Seller.-**

SEE ATTACHED FOR ADDITIONAL CLAUSES REGARDING THIS CONTRACT.

No commission

ACCEPTED:

THE SPRAGUE & RHODES COMM. CORP.,

CAPES DE LA FRONTERA, S.A. Seller

BY [Signature] Agent

BY _____ Agent

When this contract is executed by a person acting for another, such person hereby represents that he is fully authorized to commit his principal.

EXHIBIT 10

A 79

TERMS AND CONDITIONS

- ARBITRATION:** All controversies relating to, in connection with, or arising out of this contract, its modification, making or the authority or obligations of the signatories hereto, and whether involving the principals, agents, brokers, or others who actually subscribe hereto, shall be settled by arbitration in accordance with the "Rules of Arbitration" of the Green Coffee Association of New York City, Inc., as they exist at the time of the arbitration (including provisions as to payment of fees and expenses). Arbitration is the sole remedy hereunder, and it shall be held in accordance with the law of New York State, and judgment of any award may be entered in the courts of that State, or in any other court of competent jurisdiction. All notices or judicial service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforesaid rules.
- GUARANTEE:** (a) If all or any of the coffee is refused admission into the United States by reason of any violation of the Federal Food, Drug and Cosmetic Act, which violation existed in the time the coffee arrived on board ship, seller is required, as to the amount not admitted and as soon as possible, to deliver replacement coffee in conformity to all the terms and conditions of this contract, excepting only the shipment terms. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry, and payment shall be made for the replacement delivery in accordance with the terms of this contract. Consequently, if Buyer removes the coffee from the dock, Seller's responsibility as to such portion hereunder ceases.
- (b) Contracts containing the overstamp "No Pass—No Sale" on the face of the contract shall be interpreted to mean if any or all of the coffee is not admitted into the United States in its original condition by reason of failure to meet requirements of the Federal Food, Drug & Cosmetic Act, the contract shall be deemed to be null and void as to that portion of the coffee which is not admitted in its original condition. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry.
- FORCE MAJEURE:** (a) Seller and Buyer shall not be liable for delay in delivery, or delay in the performance of other acts required hereunder, when solely resulting from cause(s) wholly beyond his control, provided coffee is at specified seaport ready for shipment. Such causes shall include, but not be limited to, acts of God, acts of government, wars, revolutions, strikes, pestilence, floods, droughts, perils of the sea, or unavoidable interruption of transportation. Notice to this effect shall be given in writing at once on contracts specifying shipment from seaport. In no case shall the seller be excused by any such causes intervening before the arrival of the affected portion of the coffee in the foreign port of original shipment.
- (b) Force Majeure shall not apply when Seller's inability to export is due to Seller's lack of export quota.
- CLAIMS:** Coffee shall be considered accepted as to quality, unless within fifteen (15) calendar days after discharge of the coffee from the vessel, either:
- (a) Claims are settled by the parties hereto, or,
- (b) Arbitration proceedings have been filed by one of the parties in accordance with the provisions hereof.
- If neither has been done in the stated period, or if any chop or chops of the coffee has or have been removed from the deck before representative sealed samples have been drawn by the Green Coffee Association of New York City, Inc. in accordance with its rules, all claims as to quality regarding such chop or chops shall be unenforceable.
- DELIVERY:** (a) No more than five (5) chops may be tendered for each lot of 250 bags.
- (b) Each chop of coffee tendered is to be uniform in grade and appearance. All expense necessary to make coffee uniform shall be for account of seller.
- INSOLVENCY OR FINANCIAL FAILURE OF BUYER OR SELLER:** If, at any time before the contract is fully executed, either party hereto shall meet with creditors because of inability generally to make payment of obligations when due, or shall suspend such payments, fail to meet his general trade obligations in the regular course of business, shall file a petition in bankruptcy or, for an arrangement, shall become insolvent, or commit an act of bankruptcy, then the other party may at his option, expressed in writing, declare the aforesaid to constitute a breach and default of this contract, and may, in addition to other remedies, decline to deliver further or make payment or may sell or purchase for the defaulter's account, and may collect damages for any injury or loss, or shall account for the profit, if any, occasioned by such sale or purchase.
- BREACH OR DEFAULT OF CONTRACT:** In the event either party hereto fails to perform, or breaches or repudiates this agreement, the other party shall be entitled to the remedies and relief provided for by the uniform Commercial Code of the State of New York. The computation and ascertainment of damages, or the determination of any other dispute as to relief, shall be made by the arbitrators in accordance with the Arbitration Clause herein. Consequential damages shall not, however, be allowed.

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F.O.B. CONTRACT
OF THE
GREEN COFFEE ASSOCIATION
OF
NEW YORK CITY, INC.
Effective August 1, 1968

THE SPRAGUE & RHODES COMMODITY CORP.
80 WALL STREET
NEW YORK, N. Y. 10005

Contract Seller's No. _____

Buyer's No. 5501

Date August 22, 1975

SELLER: SOLD for account of CAFES DE LA FRONTERA, S.A.,
Mexico, D.F., Mexico.
BUYER: To THE SPRAGUE & RHODES COMMODITY CORP.,
99 Wall Street, New York, New York. (10005).

QUANTITY: About One Thousand BAGS (1,000) Bags of Mexican coffee
averaging 152 lbs. per bag.

PACKAGING: Coffee must be packed in bags of uniform size made of sisal, henequen, jute, burlap, or similar woven material, without inner lining or outer covering of any other material.

DESCRIPTION: Prime Washed Mexican coffee, new crop.
SUBJECT TO BUYER'S APPROVAL OF SAMPLE. NO APPROVAL, NO SALE.

PRICE: At Seventy Eight Cents (78¢) U. S. Currency, per Pound net.
~~XXXXXXXXXXXX~~ In store at Laredo, Texas. ~~XXXXXXXXXX~~

PAYMENT: (*) Against sight draft accompanied by a full set of clean "On Board"
XXXXXXXXXXXX B/L, signed commercial invoice in triplicate and
properly authenticated Certificates of Origin in duplicate, in
accordance with ISO Regulations prevailing at time of shipment,

SHIPMENT: During/Per Now in store at Laredo, Texas.
from Origin ~~XXXXXX~~ to Laredo, Texas.

ADVISE OF SHIPMENT: ~~XXXXXXXXXXXX~~ by direct and/or recognized indirect route. Partial shipments permitted. Date of on-board Bill of Lading to be evidence of time of shipment, but is not conclusive proof.

WEIGHTS: (1) DELIVERED WEIGHTS: Coffee covered by this contract is to be weighed at port of discharge. Any variation from invoice weights to be adjusted at contract price.
(2) SHIPPING WEIGHTS: Coffee covered by this contract is sold on shipping weights. Any loss in weight exceeding 1/2% percent at port of discharge is for account of Seller at contract price.
(3) Coffee is to be weighed within fifteen (15) calendar days after discharge of the coffee from vessel at port of discharge. Weighing expenses, if any, for account of buyer.

INSURANCE: All Marine and War Risk insurance to be covered by the Buyer.

MARKINGS: Bags to be branded in English with the name of country of origin and otherwise to comply with laws and regulations of U. S. Government, in effect at time of shipment, governing marking of import merchandise. Any expense incurred by ~~XXXXXX~~ to comply with these regulations to be borne by Seller.

~~XXXXXX~~ by the United States Government, or any authority in the United States, shall be

Memo
Contract No. 5501
No commission!

Coffee Association of New York City, Inc., in effect on the date this contract as a part of this agreement, and together herewith, constitute the entire contract, and shall be valid unless signed by the parties to the contract.
The reverse hereof, which by reference are made a part hereof, are identical with the Green Coffee Association of New York City, Inc., heretofore stated, then Guarantee Clause (a) shall not be applicable.

of Seller.

ACCEPTED:

THE SPRAGUE & RHODES COMM. CORP.

CAFES DE LA FRONTERA, S.A.

BY Engue Hale David Buyer
Agent

BY _____ Seller
Agent

When this contract is executed by a person acting for another, such person hereby represents that he is fully authorized to commit his principal.

EXHIBIT II

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TERMS AND CONDITIONS

ARBITRATION:

All controversies relating to, in connection with, or arising out of this contract, its modification, making or the authority or obligations of the signatories hereto, and whether involving the principals, agents, brokers, or others who actually subscribe hereto, shall be settled by arbitration in accordance with the "Rules of Arbitration" of the Green Coffee Association of New York City, Inc., as they exist at the time of the arbitration (including provisions as to payment of fees and expenses). Arbitration is the sole remedy hereunder, and it shall be held in accordance with the law of New York State, and judgment of any award may be entered in the courts of that State, or in any other court of competent jurisdiction. All notices or judicial service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforesaid rules.

GUARANTEE:

(a) If all or any of the coffee is refused admission into the United States by reason of any violation of the Federal Food, Drug and Cosmetic Act, which violation existed at the time the coffee arrived on board ship, seller is required, as to the amount not admitted and as soon as possible, to deliver replacement coffee in conformity to all the terms and conditions of this contract, excepting only the shipment terms. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry, and payment shall be made for the replacement delivery in accordance with the terms of this contract. Consequently, if Buyer removes the coffee from the dock, Seller's responsibility as to such portion hereunder ceases.

(b) Contracts containing the overstamp "No Pass-No Sale" on the face of the contract shall be interpreted to mean: If any or all of the coffee is not admitted into the United States in its original condition by reason of failure to meet requirements of the Federal Food, Drug & Cosmetic Act, the contract shall be deemed to be null and void as to that portion of the coffee which is not admitted in its original condition. Any payment made for any coffee denied entry shall be refunded within ten (10) calendar days of denial of entry.

FORCE MAJEURE:

(a) Seller and Buyer shall not be liable for delay in delivery, or delay in the performance of other acts required hereunder, when solely resulting from cause(s) wholly beyond his control, provided coffee is at specified seaport ready for shipment. Such causes shall include, but not be limited to, acts of God, acts of government, wars, revolutions, strikes, pestilence, floods, droughts, perils of the sea, or unavoidable interruption of transportation. Notice to this effect shall be given in writing at once on contracts specifying shipment from seaport. In no case shall the seller be excused by any such causes intervening before the arrival of the affected portion of the coffee in the foreign port of original shipment.

(b) Force Majeure shall not apply when Seller's inability to export is due to Seller's lack of export quota.

CLAIMS:

Coffee shall be considered accepted as to quality, unless within fifteen (15) calendar days after discharge of the coffee from the vessel, either:

(a) Claims are settled by the parties hereto, or,

(b) Arbitration proceedings have been filed by one of the parties in accordance with the provisions hereof.

If neither has been done in the stated period, or if any chop or chops of the coffee has or have been removed from the dock before representative sealed samples have been drawn by the Green Coffee Association of New York City, Inc. in accordance with its rules, all claims as to quality regarding such chop or chops shall be unenforceable.

DELIVERY:

(a) No more than five (5) chops may be tendered for each lot of 250 bags.

(b) Each chop of coffee tendered is to be uniform in grade and appearance. All expense necessary to make coffee uniform shall be for account of seller.

INSOLVENCY OR FINANCIAL FAILURE OF BUYER OR SELLER:

If, at any time before the contract is fully executed, either party hereto shall meet with creditors because of inability generally to make payment of obligations when due, or shall suspend such payments, fail to meet his general trade obligations in the regular course of business, shall file a petition in bankruptcy or, for an arrangement, shall become insolvent, or commit an act of bankruptcy, then the other party may at his option, expressed in writing, declare the aforesaid to constitute a breach and default of this contract, and may, in addition to other remedies, decline to deliver further or make payment or may sell or purchase for the defaulter's account, and may collect damage for any injury or loss, or shall account for the profit, if any, occasioned by such sale or purchase.

BREACH OR DEFAULT OF CONTRACT:

In the event either party hereto fails to perform, or breaches or repudiates this agreement, the other party shall be entitled to the remedies and relief provided for by the uniform Commercial Code of the State of New York. The computation and ascertainment of damages, or the determination of any other dispute as to relief, shall be made by the arbitrators in accordance with the Arbitration Clause herein. Consequential damages shall not, however, be allowed.

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MEXICO, D. F. 13 de octubre de 1975

Por medio de la presente me comprometo a liquidar todos los intereses que cause el retardo del pago de la operación comercial celebrada con el INSTITUTO MEXICANO DEL CAFE en la cuál compré 6,000 (SEIS MIL) sacos de café según Nota de Venta número EU/5-3164 y Factura número - - 0545, así como también los cargos bancarios que se hayan ocasionado - por la devolución del Cheque número 005 del Banco U.N.B.L. por la cantidad de DLS. \$606,948.74 (SEISCIENTOS SEIS MIL NOVECIENTOS CUARENTA Y OCHO DOLAR ES 74/100 U.S.c.y.) girado por mí y devuelto por dicho - Banco por carecer de fondos.

A T E N T A M E N T E

ARMANDO GUZMAN VILLANUEVA

EXHIBIT 12

A 83

MEXICO, D.F. October 13, 1975.-

By this means I commit myself to pay all the interest charges incurred by the delay in payment of the business transaction effected with the INSTITUTO MEXICANO DEL CAFE in which I purchased 6,000 (SIX THOUSAND) bags of coffee as per Sale Receipt number EU/5-3164 and Invoice number 0545, as well as Banking charges caused by the returning of check number 005 Banco U.N.B.L. in the amount of Dollars \$606,948.74 (SIX HUNDRED SIX THOUSAND NINE HUNDRED FORTY EIGHT & 74/100 U.S.cy) issued by me and returned by the Bank due to lack of funds.

Very truly yours

ARMANDO GUZMAN VILLANUEVA

11 SEP 1975

A 84

((

THE SPRAGUE & RHODES COMMODITY CORP.
NINETY-NINE WALL STREET
NEW YORK, N.Y. 10005

CABLES: SPRAGRODES

TELEPHONE: 4-8380

November 21, 1975.

Instituto Mexicano del Cafe,
Avenida Insurgentes Sur No. 421-B,
Mexico 11, D.F.

Gentlemen:

We hereby offer to pay to the Instituto Mexicano del Cafe the sum of US\$30,000.00 (Thirty Thousand Dollars) in full payment of any and all claims which the Instituto may have against us arising by virtue of any act of our former agent Mr. Armando Guzman Villanueva or otherwise. In addition, as part of such settlement we are assigning to the Instituto any claims we may have against Mr. Guzman and will cooperate on the prosecution by the Instituto of such claims.

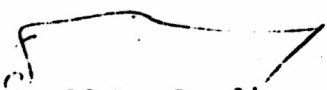
This offer is being made without any admission of liability on our part and is without prejudice.

This offer will remain open until December 20, 1975.

The foregoing offer is a summary of an offer made by us this day, in New York, to your representatives, Lic. Hector Garza Rodriguez and Mr. Jesus Rodriguez.

Very truly yours,

THE SPRAGUE & RHODES COMM. CORP.,


Donald A. Sperling
President

DAS:cb

EXHIBIT 13

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232951 SPRA UR

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BEMEXCAF MEX

INSTITUTO MEXICANO DEL CAFE

DIC. 2 1975

EN CONTESTACION A SU TELEX DEL DIA DE AYER, COMUNICAMOS A UDS.
LO SIGUIENTE:

1. EL TERMINO CONCEDIDO A SPRAGUE AND RHODES POR EL INSTITUTO MEXICANO DEL CAFE PARA LIQUIDAR SU ADEUDO POR 606,948.74 - DLLS. MAS INTERESES MORATORIOS GASTOS Y HONORARIOS DE COBRANZA, FUE POR 72 HORAS IMPROPROROGABLES, CONTADAS A PARTIR DEL DIA DE AYER. DICHO TERMINO NO SERA AMPLIADO DE NINGUNA MANERA.
 2. SI DURANTE EL TERMINO CONCEDIDO NO PROCEDEN AL PAGO DE SU ADEUDO, SE EJERCITARAN POR EL INMECAFE EN CONTRA DE SPRAGUE AND RHODES LAS SIGUIENTES MEDIDAS:
 - A) PROCEDER AL COBRO JUDICIAL DEL ADEUDO
 - B) DENUNCIARLOS PENALMENTE POR PRETENDER SOBORNAR AL FUNCIONARIOS MEXICANOS, AL PROPONERLES EL PAGO DE 30,000.00 DLLS. A CAMBIO DE NO EJERCITAR EN CONTRA DE UDS. DEMANDA ALGUNA POR EL INCUMPLIMIENTO DEL PAGO DE SUS OBLIGACIONES (CARTA DEL DIA 21 DE NOV. DE 1975).
 - C) DENUNCIARLOS PENALMENTE POR CALUMNIAR, E INJURIAR AL PERSONAL DEL INMECAFE, AL ACUSARLOS DE COMPORTAMIENTO NEGATIVA Y DE INCOMPETENTES, EN SU TELEX DE AYER.
 - D) COMUNICAR SU COMPORTAMIENTO A LOS PAISES PRODUCTORES DE CAFE SUAVES CENTRALES, COLOMBIA Y BRASIL, PARA QUE SE ENTEREN DE LA PRESENTE OPERACION.
 - E) DENUNCIARLOS ANTE LA BOLSA DE VALORES DE NEW YORK, INTERNATIONAL O COFFEE ORGANIZATION, GREEN COFFEE ASSOCIATION - OF NEW YORK, O.I.C. Y NATIONAL COFFEE ASSOCIATION.
 3. LAS PRUEBAS Y DOCUMENTOS QUE SOLICITAN, CONSIDERAMOS NO SON NECESARIOS DE ENVIO, YA QUE UDS. CONOCEN DE SOBRA SU EXISTENCIA Y AL ACCEDER A SUS DESEOS SOLO IMPLICARIA PERDIDA DE TIEMPO, INDEPENDIETEMENTE DE QUE ESTARAN EN POSIBILIDAD DE CONOCERLAS. SI TENEMOS NECESIDAD DE DEMANDAR LOS JUDICIALMENTE Y DE APORTARLAS - COMO PRUEBAS AL JUICIO CORRESPONDIENTE.
- CON LO ANTERIOR, DE NUEVA CUENTA LES SUGERIMOS RECONSIDERAR EN SU ACTITUD DE EVADIR EL PAGO DE SUS OBLIGACIONES, YA QUE EN CASO CONTRARIO SE VERAN ENVUELTOS EN SERIAS DIFICULTADES Y AL FINAL - TENDRAN QUE LIQUIDAR EL ADEUDO RECLMADO, MAS INTERESES MORATORIOS GASTOS Y COSTAS DE JUICIOS.

ATTE.

LIC. HECTOR GARZA R.
GERENTE LEGAL

CCCP MR. LU JULIS KATS US STATE DEPARTMENT
 " " LIC. FAUSTO CANTU PERA
 " " DANIEL MORALES ALANIS
 " " GUILLERMO PUENTE C.

REC BIEN????????????????????????????????

SI BIEN RECIBIDO ADL O BIBI

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BEMEXCAF MEX

EXHIBIT 14

RCA Global Communications

RCA Global Communications

RCA Global Communications

RCA Global Communications

RCA Global Co

December 2, 1975

A 86

In reply to your telex of yesterday, we inform you the following:

- 1- The time given to Sprague & Rhodes by Instituto Mexicano del Cafe to liquidate the debt of 606,948.74 Dollars plus interest, expenses, and collection fees was 72 hours that could not be extended, beginning yesterday, this time will not be extended at all.
- 2- If during the time allowed you do not proceed to liquidate this debt, Inmecafe will exercise against Sprague & Rhodes the following measures:
 - A) Proceed to collect this debt through legal channels
 - B) Denounce you for pretending to bribe Mexican public officials, proposing the payment of 30,000.00 Dollars if they do not proceed against you for payment of your obligations (Letter of November 21, 1975)
 - C) Denounce you before the law for slandering and abuse personnel of Inmecafe accusing them of incapability and negligence in your telex yesterday
 - D) Advise of your behaviour to all the producing countries of mild coffees centrals, Colombia and Brazil, so they know of the actual problem.
 - E) Denounce you before the Stock Exchange of New York, International Coffee Organization, Green Coffee Association of New York City O.I.C. and National Coffee Association.
- 3) The proof and documents that you request, we consider it not necessary that we send them since you well know of its existence and to comply with this request would be a waste of time, besides, you will be in a position to see them if you force us to sue you, they will be presented as proof in the trial.

With the above, we again suggest you to reconsider your attitude trying to avoid payment of this debt because otherwise you will be involved in serious difficulties and at the end you will have to pay the amount of the debt we are claiming plus interests, expenses and legal fees.

Truly yours

LIC. HECTOR GARZA R.
Legal Manager

CCCP Mr. Lu Julis Kats US State Department
Lic. Fausto Cantu Pena
Lic. Daniel Morales Alanis
Lic. Guillermo Puente C.

Well received?
Yes well received ga or bibi.
Ok bibi

A 87

Filed
Jul 27 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
SPRAGUE & RHODES COMMODITY CORP., : 76 CIV. 3128
: (L.W.P.)
:
Petitioner, :
:
- against - : STIPULATION and ORDER
:
INSTITUTO MEXICANO DEL CAFE, :
:
Respondent. :
:
-----X

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel for the parties Sprague & Rhodes Commodity Corp. ("Sprague & Rhodes") and Instituto Mexicano Del Cafe ("Instituto") as follows:

1. The hearing on this Court's Order to Show Cause dated July 15, 1976 which was to be held at 10:30 A.M. on July 20, 1976 is adjourned to and until 4:30 P.M. on August 11, 1976 in Room 307 of the United States Courthouse, Foley Square, New York, New York.

2. The adjournment described in paragraph 1 hereof has been granted based upon the following representations and agreement by counsel for Instituto:

(a) The law firm of Silberfeld, Danziger and Bangser hereby appears in this proceeding on behalf of Instituto (although Instituto reserves the right to object to the jurisdiction of this Court) and said law firm affirms that it expressly is authorized to make the representations and agreement confirmed herein on behalf of Instituto;

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(b) Instituto has not obtained any judgment by default or otherwise, in any action commenced by it against Sprague & Rhodes in the Superior Court of Mexico ("the Mexican action") or in any other court in any other jurisdiction; and

(c) Up and until August 17, 1976 Instituto will not take any action whatsoever to obtain or enter or enforce any judgment in the Mexican action or in any other action in any other jurisdiction.

3. Instituto shall serve its answering papers, if any, by hand upon Sprague & Rhodes' counsel by no later than 6:00 P.M. on August 3, 1976 (although any affidavit may be served in the form of an unexecuted draft and a copy of such finally executed affidavit, with such changes therein as affiant may have made, may be served by hand no later than 5:00 P.M. on August 6, 1976) and Sprague & Rhodes thereafter may serve reply papers thereto.

Dated: New York, New York
July 19, 1976

PHILLIPS, NIZER, BENJAMIN, KRIM &
BALLON

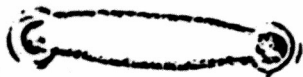
By *[Signature]*
A member of the Firm
Attorneys for Petitioner
Sprague & Rhodes Commodity Corp.
40 West 57th Street
New York, New York 10019
(212) 977-9700

SILBERFELD, DANZIGER & BANGSER

By *[Signature]*
A member of the Firm
Attorneys for Respondent
Instituto Mexicano Del Cafe
230 Park Avenue
New York, New York 10017
(212) 889-8400

SO ORDERED: July 26, 1976

L. P. Gagliardi
U.S.D.J.



United Mexican States
Federal District
City of Mexico
Embassy of the United
States of America } S.S.

A 89

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SPRAGUE & RHODES COMMODITY CORP.

Petitioner,

against

INSTITUTO MEXICANO DEL CAFE,

Respondent
-----x

76 Civ. 3128
(LWP)

AFFIDAVIT IN OPPOSITION
TO PETITION AND MOTION

UNITED MEXICAN STATES
FEDERAL DISTRICT
CITY OF MEXICO
EMBASSY OF THE UNITED STATES OF AMERICA }

ss.:

JORGE LEON ORANTES V., being duly sworn, says:

1. I am an attorney, duly admitted to practice under the laws of the Republic of Mexico and of the Federal District. I am a partner in the law firm of Goodrich, Dalton, Little & Riquelme, with offices at Paseo de la Reforma 355, Mexico, D.F. I am Mexican counsel to Instituto Mexicano del Café ("Instituto"). This affidavit is provided at the request of Instituto's New York counsel, Messrs. Silberfeld, Danziger & Bangser, in connection with the proceeding between Instituto and The Sprague & Rhodes Commodity Corporation ("Sprague & Rhodes") and Armando Guzmán Villanueva ("Guzmán").

2. I have read, and am familiar with, the affidavit of Jack Bloom, Vice President of The Sprague & Rhodes,

(the "Bloom affidavit") submitted in support of the petition and motion now pending in this court to set aside this court's order giving effect to Mexican letters rogatory, and compelling arbitration. In contradiction of specific allegations of the Bloom affidavit, this affidavit will: (I) demonstrate that the action commenced by Instituto against Sprague & Rhodes and Guzmán in the Superior Court of Justice of the Federal District of Mexico was properly brought in accordance with the law and procedures of Mexico; (II) confirm that, under the applicable court procedures in Mexico, a defendant such as Sprague & Rhodes can appear, either specially or generally, to contest the jurisdiction of the court or to seek an order compelling arbitration; and (III) establish that the alleged fears of Mr. Bloom about persecution of Sprague & Rhodes if it litigates in Mexico are utterly without foundation.

The Mexican litigation was properly brought.

3. In Paragraph 46 of the Bloom affidavit (commencing on page 22 thereof) reference is made to advice allegedly received by Sprague & Rhodes from the law firm of Baker & McKenzie, as well as from Dean Jimeno of the Free Mexican Law School, to the effect that Sprague & Rhodes is not subject to the personal jurisdiction of any court in Mexico. No affidavit, letter or legal opinion from either

of the said sources has been attached to the Bloom affidavit.

In my opinion, speaking as a partner in the largest International law firm in Mexico City, the action in progress in the Superior Court of Mexico City is in all respects proper under Mexican law; and jurisdiction over Sprague & Rhodes is complete. Any judgment rendered therein against Sprague & Rhodes will be enforceable in Mexico and, I presume, within civilized jurisdictions granting comity to the judicial decisions of the courts of other nations duly rendered.

4. In accordance with Article 1106 of the Code of Commerce and Article 156, Paragraph IV, of the Code of Civil Procedures, where the commercial transaction giving rise to the dispute was concluded in Mexico, and there are two defendants having different domiciles, the plaintiff has the right to select as the jurisdiction for the commencement of the litigation the domicile of either defendant.

5. Under the provisions of Article 1073 of our Code of Commerce, if notification (that is, our equivalent of the service of summons and complaint under United States law) must take place outside the jurisdiction of the court, our Court will issue letters rogatory to the court of respondent's domicile to request that such notification be made. This procedure, I am advised, operates in this instance substantially like the so-called long-arm jurisdiction procedures in effect under the laws of each of the United States;

and thus gives our court jurisdiction over a non-domiciliary defendant in a litigation arising out of a transaction in which that non-domiciliary participated in Mexico City.

6. Sprague & Rhodes claims a right to have the dispute arbitrated. I am familiar with the documentation relative to the dispute, and the affidavits, pleadings and exhibits submitted in connection with both the Mexican and United States court proceedings. While Mexican law of course recognizes and enforces arbitration agreements, our law requires that, where the commercial transaction itself was negotiated and concluded within Mexico, the arbitration provision must be in writing. The commercial transactions giving rise to the dispute now in litigation were negotiated entirely in Mexico, and called for performance in Mexico.

No written arbitration provision apparently was ever sent to Instituto or received by it from Sprague & Rhodes. This has been conceded by Guzmán in the Mexican litigation (see Exhibit V to these affidavits). Accordingly there exists no arbitration right for this dispute under our laws.

7. In any event, Sprague & Rhodes has the right to challenge the jurisdiction of our Superior Court if it claims the existence of a privilege to arbitrate the dispute under the laws of any jurisdiction.* And in fact, as is indicated by paragraphs 8 to 12, below, Sprague & Rhodes has already availed itself of the opportunity to raise such

*Mexico is a signatory nation to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.- See Article II.

challenges in the Superior Court; but failed in its efforts because it subsequently determined not to press any of its objections to a conclusion until it had tried its chances in United States District Court.

SPRAGUE & RHODES' special appearance in Mexico by counsel.

8. The Bloom affidavit fails to advise the United States District Court that Sprague & Rhodes has already made a special appearance through counsel in the Mexican proceeding and there unsuccessfully challenged the court's jurisdiction. Our procedures recognize the right of a defendant, whether served with notification within Mexico, or through the device of letters rogatory outside Mexico, to raise a preliminary challenge to the competence of the court, or to its jurisdiction, or to the existence of an arbitration agreement, as the circumstances may warrant. This opportunity was availed of by Sprague & Rhodes in Mexico on June 6, 1976.

9. As indicated by Exhibit I attached to these affidavits, Sprague & Rhodes apparently retained Jaime González Bendiksen, Esq. of the Mexico City law firm of Sepúlveda, to appear specially in the Mexican proceeding and to challenge the court's jurisdiction. It is noteworthy that the Sepúlveda firm is closely associated with the Baker & McKenzie law firm, which has been providing Sprague & Rhodes

with on-going advice as to Mexican law.

10. The appearance entered by Mr. Gonzalez Bendiksen was made in accordance with a procedure whereunder an attorney may appear on behalf of a defendant without filing an authorization from his client submitting it to Mexican jurisdiction. Such procedure is, I am told, the approximate equivalent of a special appearance under United States practice. Under our procedure in Mexico, if an attorney wishes to appear specially (without filing a power) of attorney or other authority from his client) he must post a bond to secure the plaintiff respecting the collection of any judgment which the plaintiff may recover against a non-domiciliary defendant. Such was the case with Sprague & Rhodes' lawyer here.

11. The petition of Mr. Gonzalez Bendiksen (which was filed without notice to Instituto, in accordance with Mexican procedures) was accepted by the Court on June 15, 1976 for consideration (upon notice to Sprague & Rhodes and Guzman), subject to posting of a suitable bond (Exhibit II hereto). For reasons never communicated by Mr. Gonzalez Bendiksen to Instituto or its counsel, however, the bond was not posted; and, upon application of Instituto (Exhibit III) Mr. Gonzalez Bendiksen's petition was dismissed by the Superior Court on July 9, 1976. (Exhibit IV)

12. The point is that Sprague & Rhodes, having employed counsel to avail itself of its right under Mexican procedures to question jurisdiction, and possibly to challenge the proceeding on the basis of the claimed existence of an arbitration agreement, chose to withdraw its application or to let it lapse. This was not done because anyone was threatened, arrested, harassed or persecuted; but presumably because Sprague & Rhodes or its legal advisors anticipated a better possibility for success in impeding Instituto's prosecution of its claim through intervention by the United States District Court, than by continuing to dispute matters in the Mexican forum. It can therefore be questioned whether those allegations of the Bloom affidavit which indicate that Sprague & Rhodes fears discrimination or persecution in the Mexican court were made in good faith.

A fair trial in Mexico

13. As a member of the Mexican bar, I must express my indignation and outrage at the allures, innuendos, and misstatements through which the Bloom affidavit contends that even-handed justice is not available to civil litigants in Mexico City. This is simply untrue.

14. Mexico City is the largest city in the Western hemisphere; it is one of the world's great commercial and industrial centers. The courts of Mexico City are, of

A 96

course, regularly utilized for the resolution of commercial disputes of the most sophisticated and complex order. Its bar is the oldest independent organized bar in the Western Hemisphere. Our bar and judiciary have, I respectfully submit, as high a reputation for integrity and scholarship as any in the Americas.

15. My firm, Goodrich, Dalton, Little & Riquelme, is the largest international law firm in Mexico City, with offices in London and Paris as well as in the Federal District. My fifty partners and associates here (who include many lawyers admitted to practice in various States and Federal courts in the United States) engage in an active commercial practice, in which we represent many of the largest multinational business enterprises in the world. These include, for example: F. W. Woolworth Co, Sherwin-Williams Co., Allis-Chalmers Corporation, Sheraton Hotels, Anderson Clayton Co., Dresser Industries, Inc., Ralston Purina Co., etc.

I have myself been engaged on behalf of such American business enterprises in litigation against the Mexican government, or agencies of the Mexican government. Never in my practice have I observed, or heard it said by my colleagues, (as the Bloom affidavit avers) that parties opposing the Mexican government in litigation are persecuted, held in "protective custody", or otherwise harassed. Again, the

Bloom affidavit refers (in paragraph 46) to advice rendered from Dean Jimeno and from Baker & McKenzie. Again, it should be noted that no such statement, under oath or otherwise, has been submitted by any member of our bar; and it would surprise me exceedingly to know that they had in fact given such advice.

16. If Sprague & Rhodes retains counsel, and duly files the power of attorney that any litigant normally files authorizing its counsel to appear on its behalf in a Mexican litigation, then its officers, employees or other agents from the United States or anywhere else will of course be free to come and go in and out of Mexico; and all the files, evidence and records of the proceedings will of course be available. In the case at hand and in accordance with Article 1061 of the Code of Commerce simple copies of the attachments exhibited with the claim shall not be sent to defendant since they exceed 25 pages. Furthermore, it is not possible to prepare the claim in the English language as the action is filed in Mexico and can only be carried out in the Spanish language.

17. I suggest that it is absurd for Mr. Bloom to urge this honorable court to believe that such brutal and repressive procedures obtain here, in the face of the every-day involvement of thousands of United States and European concerns in private business transactions, and in business transactions involving the Mexican Government.

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18. I respectfully suggest that the petition pending now in this court was undertaken for no purpose other than to compel Instituto to litigate its disputes in New York City, rather than in Mexico City where the transactions themselves occurred and most of the relevant witnesses and evidence are available. I suggest that Mr. Bloom's effort is not to obtain a fair and prompt adjudication, but to prevent such an adjudication from occurring at all.

The effect of a stay of the Mexican litigation.

19. I note that the application of Sprague & Rhodes requests this court to grant a stay of the pending litigation in the Superior Court of the Federal District of Mexico. I do not know whether the power of the United States District Court, either under the United States Arbitration Act or generally, can be extended to impose a stay upon proceedings in the courts of Mexico, or can be applied to restrain a Mexican domiciliary from proceeding further in a Mexican court. It should be borne in mind that the Instituto is an agency of the Mexican Government, and that its officials may be chargeable with dereliction of duty if they fail to pursue a litigation in all respects properly commenced by them in the courts of Mexico.

20. Moreover, even if the Instituto were to be stayed by this court from further participation in the Mexican proceedings, those proceedings would continue unabated in accordance with our Code of Civil Procedures. The litigation

A 100

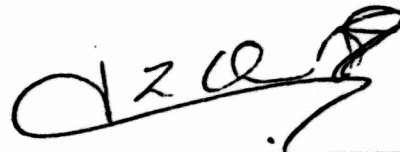
In Mexico was commenced against both Sprague & Rhodes and Guzman; and even Sprague & Rhodes has conceded the culpability of Guzman in the transactions which occurred. If the Instituto were prohibited by the order of this court from presenting proofs in the Superior Court of the Federal District, or its ability to submit proofs were limited so as to prevent the submission of evidence which could also support a judgment against Sprague & Rhodes, then the claim of Instituto against Guzmán would also probably fail.

21. The litigation having once commenced, under Mexican procedures, the court must proceed through all phases of the proceeding until it is concluded or defaulted. Thus, if the application of Sprague & Rhodes for a stay be granted, not only will Sprague & Rhodes obtain postponement of its own day in court, but Guzmán would probably escape liability completely. Since disputes with Guzmán are not subject to arbitration in New York or anywhere (indeed, it can be questioned whether, once outside the jurisdiction of Mexico, Mr. Guzmán would be willing even to return), the application of Sprague & Rhodes must be seen as an effort not only to protect itself against having to pay for the coffee it bought, but also to protect its accomplice Guzmán from liability or punishment.

For these reasons, then, as well as those referred to in the other affidavits submitted on behalf of Instituto,

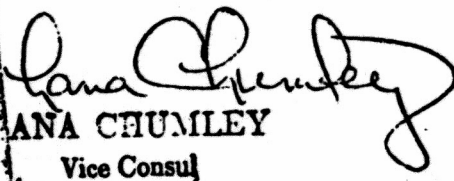
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I respectfully requested that the application of Sprague
& es be denied in all respects, and the proceedings in
Me permitted to continue without hindrance from this
c

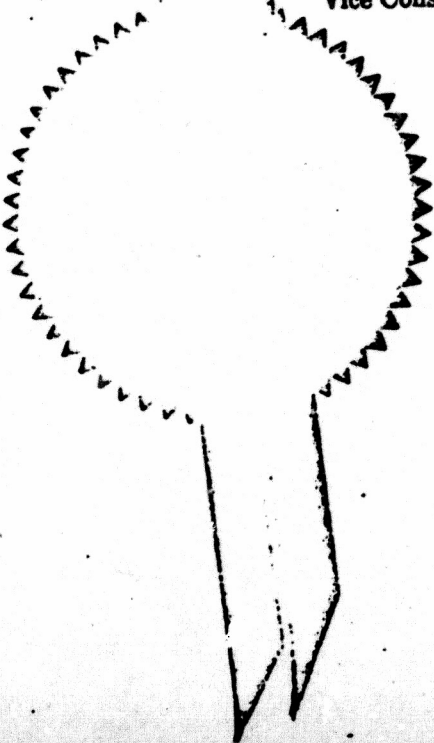


Jorge León Orantes V.

Sw before me JTH.
thi ay of August, 1976.



ANA CHUMLEY
Vice Consul



United Mexican States
Federal District
City of Mexico
Embassy of the United
States of America } ss.

A 102

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SPRAGUE & RHODES COMMODITY CORP., : 76 Civ. 3128
 : (LWP)
 Petitioner, :
 -against- : AFFIDAVIT IN
 : OPPOSITION TO
 INSTITUTO MEXICANO DEL CAFE, : PETITION AND
 : MOTION
 Respondent. :
-----X

UNITED MEXICAN STATES)
FEDERAL DISTRICT) ss.:
CITY OF MEXICO)
EMBASSY OF THE UNITED STATES OF AMERICA)

HECTOR GARZA RODRIGUEZ, being duly sworn, says:

1. I am general counsel of Instituto Mexicano del Cafe ("Instituto"), respondent in this proceeding. I am fully familiar with the facts relating to the dispute pending between The Sprague & Rhodes Commodity Corporation ("Sprague & Rhodes") and the Instituto in this court and in the Twenty-Eighth Civil Court of the Superior Court of the Federal District of Mexico.

2. The Instituto most strenuously opposes the application made herein by Sprague & Rhodes. No written arbitration agreement has ever been delivered, or was at any time even mentioned, to the Instituto by anyone on behalf of Sprague & Rhodes during the coffee sales transactions which gave rise to this litigation. The right of the Instituto to seek payment by litigation in Mexico for the 6,000 bags of coffee it delivered to Sprague & Rhodes, and for which it has not been paid, is well-established by Mexican law. The jurisdiction of our Superior Court to hear this proceed-

A 103

ing was perfected by service of the Letters Rogatory and complaint in accordance with our Code of Civil Procedures.

3. The Mexican court is obviously the proper forum to hear and decide a dispute arising out of the purchase of Mexican coffee made in Mexico by Sprague & Rhodes' Mexican agent. Sprague & Rhodes has already retained counsel who have in fact appeared in the Mexican litigation and unsuccessfully challenged the jurisdiction of the Mexican court. (See paragraphs 43 to 45 below; and paragraphs 8 to 12 of the affidavit of Lic. Jorge Leon Orantes V., Instituto's Mexican counsel.) The contentions of Sprague & Rhodes that it fears some sort of persecution if it continues to defend the litigation in Mexico are insulting and false.

4. The questions presented for decision on this application are actually quite specific. They are: (a) whether or not a binding arbitration agreement exists when there concededly has been neither delivery of nor oral reference to any written arbitration term; (b) whether this court should attempt to exercise any jurisdiction under the United States Arbitration Act when Mexican courts are empowered by international convention and their own procedures to determine whether an arbitration submission exists; (c) whether the public policy of the United States favoring compliance with requests received from foreign courts for service of documents should be overridden because of the unsupported and unwarranted claim of Sprague & Rhodes that the courts of the largest city in the western hemisphere are hostile to United States litigants; and (d) whether this court should stay the Mexican proceedings where such a step may produce inconsistent judgments in Mexico and

A 104

New York, or where the practical effect of a stay may be to prevent Instituto from enforcing its rights against Sprague & Rhodes or Guzman anywhere, and also to expose the officers of Instituto to sanctions for dereliction of duty.

5. It is equally important, however, in light of the misconceptions and untruths set forth in the affidavit of Jack Bloom, petitioner's Vice President (the "Bloom affidavit"), to demonstrate that Instituto has a clear and unquestioned right to the recovery from Sprague & Rhodes of the full sum demanded in the Mexican litigation. For this court's determination of the narrow questions presented should be assisted by a clear showing that Sprague & Rhodes was apparently ignorant of the standard procedures for coffee export between Mexico and the United States; that it retained and authorized as its agent in Mexico an individual inexperienced in coffee export; that it issued purchase contracts for thousands of bags of coffee to companies which, had it troubled to investigate, it would have learned were not licensed to export coffee and did not own coffee for export.

6. Compounding this conduct, Sprague & Rhodes confirmed by telex the purchases which its agent made; and thereupon received the coffee under clear notice that it all came from Instituto. Notwithstanding such notice, however, and without awaiting sight drafts or documents, Sprague & Rhodes now claims to have paid others for the coffee it thus received. When confronted with clear evidence of its own mistakes and breaches of procedure, Sprague & Rhodes has attempted to brazen it out, and has hired bat-

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series of lawyers in New York and Mexico City in an effort to prevent its ever having to pay for the coffee it has already received and resold.

The role of Instituto in Mexican coffee export.

7. The affidavit of Eduardo Gonzalez A., Sales Manager of Instituto, provides a detailed description of the way in which coffee sales for export are routinely handled in Mexico, whether by the Instituto as exporter for its own account, or by private exporting concerns. It is important, however, that our coffee sales transactions be given some scope and dimension. The exportation of coffee has grown to be a principal element in Mexico's international commerce. In 1970, Mexico exported 1,413,200 bags of coffee (each bag weighing approximately 60 kilos), for an aggregate export price of more than \$86,000,000. The anticipated total export for 1976 is 2,795,000 bags at an aggregate export price of \$330,000,000.

8. While Mexican coffee is privately bought and sold for domestic consumption, all export sales are regulated for the purpose of stabilizing the price at levels satisfactory to the Mexican government. The Instituto is charged by Mexican law with analyzing and determining the size of the Mexican coffee crop, and establishing and licensing export quotas each quarter.* In order to do this, the Instituto requires all private concerns desiring to export coffee for the three-month period in question to file with the Instituto proof that they have acquired ownership of a specific amount of coffee, and an application for the allocation of an export quota for a specific portion of

* The Institute itself also acquires coffee which it sells both domestically and for export.

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that coffee through specific ports. (See Gonzalez affidavit, paragraphs 14 and 15.) With such data before it, the Instituto determines what portion of the crop which has been requested for export should be in fact allocated to export. The Instituto also determines, and from time to time alters, the minimum price at which coffee may be exported.

When the aggregate export amount has been determined, the Instituto then allocates the quota proportionately among the private exporters requesting licensure. The Instituto, of course, retains complete records of the private concerns which have been licensed for export for each quarter, together with the amounts of quota and ports approved for such exporters; and this information is, of course, made available upon inquiry to interested customers worldwide.

9. Free export sales are negotiated in many ways: by telephone, by telex, or face to face. It is unusual for purchases in the coffee business to be negotiated by long distance by letter or by the exchange of long-form agreements. As the Gonzalez affidavit indicates in paragraphs 5 to 7 thereof, the sales of export coffee in Mexico operate largely by telex and word of mouth and rest upon the firm foundation of good faith which extends throughout most concerns and elements in the coffee trade. Despite its position as Mexico's leading coffee exporter, so far as I am aware, the Instituto has seldom, if ever, been involved before in litigation or arbitration over the sales of coffee.

10. Slightly more than half of Mexican coffee exports is to buyers in the United States; and it is true, as the Bloom affidavit alleges, that the bulk of these sales are to members of the Green Coffee Association of New York, Inc. ("GCA"), who usually (but by no means always) confirm

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their sales transactions by sending the standard GCA contract. Such confirmation normally arrives many days or even weeks after the sale has been agreed upon, and often long after delivery has occurred. This is even more true with European and Asian sales.

As a result, confirmation by letter when a Mexican agent represents the foreign buyer, or by telex from the foreign buyer itself, is by far the customary way in which the immediately operative confirmation is made.*

11. In export sales, as stated above, our procedures require that any private exporter own the coffee in question before negotiating the sale itself. Thus, the Bloom affidavit is wrong when, in paragraph 13, it declares that:

"Sales...are made to Mexican purchasers for resale... abroad. It is significant that various Mexican shippers may agree to sell coffee to importers in the United States and, thereafter, purchase that coffee from Instituto. The coffee itself never changes hands in Mexico and Instituto (not the seller) could make delivery of the coffee to a customs broker and warehouse in the United States."

The fact is that, while the Instituto does sell to Mexican purchasers, all such sales are for domestic consumption only. It is not possible under our regulations for a Mexican shipper to sell coffee to a foreign customer and thereafter purchase that coffee -- from Instituto or anyone else. Our system is designed to prevent speculation in coffee contracts within Mexico; and for that reason, the exporter must own the coffee before applying for his export permit. Therefore, when a particular sale to a foreign purchaser has been negotiated by the private concern, notice of that sale must at once be provided to Instituto, which (acting as supervisor of exports for the government) reviews the

* In fact, both these methods were used hereby by Sprague & Rhodes -- in each case absolutely without reference to or identification of an arbitration clause.

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as of the sale to make sure that they conform to the private selling concern's export license and assigned quota.

12. According to the Bloom affidavit, Sprague & Rhodes was persuaded by its Mexico City agent Armando Guzman Villanueva ("Guzman"), to send GCA contracts in the name of Instituto and two private Mexican concerns, Manuel Panagos Lara ("Panagos") and Cafes de la Frontera ("Frontera"), which did not represent negotiated sales -- and therefore were not confirmations of sales at all, but represented only what Sprague & Rhodes concedes to have been future speculative ventures. Bloom claims that these "contracts" were for registration purposes only. If Sprague & Rhodes had been familiar with our export regulations, as above described, it would have known that there is no such thing: that the Instituto either (i) licenses a Mexican concern to export a quota amount, or (ii) approves a fully negotiated sale.

13. Moreover, in its apparent haste to speculate in Mexican coffee, Sprague & Rhodes was guilty of a fundamental mistake: it did not bother to check with Instituto to determine whether the companies with which Guzman claimed to be dealing were licensed for export in July-August, 1975. A simple telephone call to our offices in Mexico City would have prevented Sprague & Rhodes from exposing itself and the Instituto to all that has followed. For the fact of the matter is that Panagos -- to whom Instituto claims to have made payment for 2,000 bags -- had a license to export only 1,000 bags in the month of June, 1975; and even more shocking: Frontera -- which Sprague & Rhodes paid for 3,000 bags -- had no export license at all!*

* Those 1,000 bags are old coffee 73/74 crop, priced 47.50 dollars per 100 -- pounds F.O.B. Laredo Texas; they were sold on June 26, 1975 to Sprague & Rhodes, and crossed the border on July 18, 1975. The coffee referred in Bloom's affidavit are 74/75 crop with different price. Panagos has exporter's registration number 108; Guzman & Companies hasn't any Instituto's registration at all.

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specific transactions in dispute; and the absence of
any arbitration provision.

14. It is important to note that Sprague & Rhodes had been at great pains to specify that Guzman was its authorized agent. The Bloom affidavit quotes, at paragraph 21, from a telex which Sprague & Rhodes sent to the Instituto on July 21, 1975, in which Guzman's authority to make the purchases that he was then engaged in ordering was expressly confirmed. (The full text of that telex is attached to these affidavits as Exhibit A). What Mr. Bloom has not disclosed is that, as early as December 16, 1974, Mr. Bloom himself had telexed to Instituto (Exhibit B attached to these affidavits) to identify Guzman as Sprague & Rhodes' agent, and to express the hope that the Instituto would deal with Guzman, so that Sprague & Rhodes could once again return to the Mexican coffee market, in which it had apparently not dealt for many years.

15. On July 29, 1975, when Guzman placed this first order with Instituto on behalf of Sprague & Rhodes, Instituto requested immediate written confirmation. It received, in addition to the telex from Sprague & Rhodes confirming Guzman's authority to make the purchase, a letter from Guzman himself, a copy of which is attached as Exhibit C to these affidavits. Thus, as to the first 3,000 bags which were sold and delivered by Instituto to Sprague & Rhodes, confirmations by both letter and telex were immediately placed on file; and, in accordance with the standard practice of good faith reliance on confirmed agents, the Instituto held itself ready to accept additional orders for Sprague & Rhodes through Guzman.

16. I stress that Guzman never delivered to Instituto any GCA form agreement with respect to either the 3,000 bags ordered on July 29, 1975 or any other portion of the 6,000 bags which Sprague & Rhodes bought for August shipment

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o Laredo. The next 3,000 bags were ordered orally by Guzman on August 13, 1975; and, since Guzman stressed the urgency of immediate delivery, the Instituto at once gave instructions that these additional 3,000 bags should be shipped from the coffee growing districts to Laredo at the same time as the 3,000 bags which had been ordered two weeks earlier.

17. Nor was there anything unusual about the fact that the first 3,000 bags had not yet been shipped by August 13: coffee is normally bought in Mexico for trans-shipment to the United States through Laredo in either "the first 15 days of the month" or "the last 15 days of the month". The only unusual feature, therefore, about the entire order and arrangements for shipment of the 6,000 bags was the need for urgent delivery which Guzman, as Sprague & Rhodes' duly authorized agent, had stressed on August 13.*

18. Sprague & Rhodes compounded the negligence exhibited by it in the negotiation phase by its apparent ignorance of the unique delivery practices which had developed in recent years at Laredo for sales from Mexican exporters to United States importers. These delivery practices, which are described in paragraphs 8 to 10 of the Gonzalez affidavit, do not call for payment to be made "promptly upon receipt of the coffee", as claimed by Bloom in paragraph 11 of his affidavit. Rather, payment is made upon receipt of: (i) a sight draft from the exporter, (ii) a certificate of arrival (proving that the coffee was received by the

* Although the Bloom affidavit makes no mention of it, in the first days of September, 1975 Guzman once again orally ordered a third 3,000 bags for Sprague & Rhodes. This order was of course rejected by Instituto when it learned a few days later that Sprague & Rhodes had refused to pay for most of the earlier shipments.

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purchaser's customs broker), (iii) a commercial invoice, (iv) exportation papers, and (v) certificate of origin. Sprague & Rhodes, it seems, sent out more than half a million dollars to two companies not licensed to export coffee, without demand or draft, with no certificate of origin or of arrival, and in disregard of clear notice of the fact that all of the coffee in question had been sold and delivered exclusively by Instituto!

19. When the coffee arrived at Nuevo Laredo, it came unmistakably identified as emanating from Instituto, and the waybills which accompanied the coffee likewise identified it as Instituto's coffee. Sprague & Rhodes' agent in Laredo, Carrillo & Company, customs brokers, have expressly acknowledged to me by letter dated November 28, 1975 (Exhibit D attached to these affidavits) their receipt of the 6,000 bags as sold by Instituto to its principal Sprague & Rhodes; that Sprague & Rhodes was promptly advised by Carrillo that the coffee had been received from Instituto; that Carrillo duly trans-shipped the coffee to the United States customers of Sprague & Rhodes which had been identified to it by Sprague & Rhodes; and that Sprague & Rhodes duly paid Carrillo for such services.

In face of this clear showing that Sprague & Rhodes had received notice through its agent that all of the coffee it bought had been sold to it by Instituto, the payment procedures which it utilized were reckless at best; and at worst constituted a part of a deliberate program to avoid payment to Instituto.*

* It should be observed that, although the contracted price for the 6,000 bags was \$727,881.76, Sprague & Rhodes admits having paid altogether only \$614,525 for the same coffees (Bloom affidavit, par. 26). The difference suggests that Sprague & Rhodes may simply have been playing a confidence game to get coffee at lower prices than market.

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20. Again, I wish to stress that Instituto received no GCA form respecting any of these transactions. Our files establish this fact; and Guzman himself has admitted as much in his answer on file in the proceedings before the Superior Court of the Federal District of Mexico. Attached as Exhibits E and F to these affidavits are certified translations of the Complaint and the Guzman Answer in that proceeding; paragraphs II, III & V of the Guzman Answer make clear his admission that no such form was delivered. The Bloom affidavit concedes that its "for registration purposes only" Form No. 5437-F was never delivered; and, although the Bloom affidavit (paragraph 23) asserts that it issued to its agent Guzman a GCA contract for 1,000 bags, even Mr. Bloom does not allege that that contract was ever delivered to Instituto, for in fact it never was.

21. In short, until this dispute entered litigation, Instituto never received or was proffered any GCA contract between Sprague & Rhodes and Instituto for the coffees in question.*

22. Indeed, if Sprague & Rhodes' GCA form contracts No. 5481 and 5437-F (copies of which are attached as Exhibits 8 and 9 to the Bloom affidavit) had in fact been tendered to Instituto at the time when Sprague & Rhodes thought they were being delivered by their agent Guzman, Instituto would have rejected them instantly. Such rejection would have been made because the contracts were not

In fact, not only was arbitration never mentioned or referred to when the coffee sales were negotiated; but in all the settlement discussions had from September 1975 to the date Sprague & Rhodes filed its petition in this court, no one mentioned or proposed that a right to arbitrate existed.

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in conformity with the orders, neither as to quantity nor payment terms. Instituto had never been approached by Guzman for the sale of 1,000 bags; and the presentation of forms aggregating 4,000 bags, when in fact Guzman and Sprague & Rhodes had orally and by telex purchased 6,000 bags, would have brought the discrepancy to light on the instant.

23. Moreover, an examination of the 5437-F and 5481 GCA forms shows that they contain a term which bore no relation to the transaction which actually occurred. The 5437-F form describes "payment" as being "against sight draft accompanied by a full set of clean 'On Board' ocean steamer B's/L, signed commercial invoice in triplicate" and other documents. The 5481 form, while not referring to an "ocean steamer", contains substantially the same payment terms. In fact, coffee moves from the points of bagging to Laredo only by truck or rail*; and the standard GCA contracts which Sprague & Rhodes' more knowledgeable competitors submit to us from time to time specifically declare that payment is to be against truck waybills or railroad bills of lading.

24. Much more significant is the fact that the 5481 GCA form for 1,000 bags, which Bloom claims referred to 1,000 bags of the 6,000 Sprague & Rhodes received, expressly calls for payment against sight draft and commercial invoice. Yet the Bloom affidavit concedes that Sprague & Rhodes made its payment without receipt of any sight draft or commercial invoice -- a strange circumstance indeed for one who is accusing Instituto of "deviation from its standard procedures" (paragraph 18 of the Bloom affidavit).

25. Again, I respectfully stress, as the Gonzalez affidavit demonstrates, the practice which now obtains for

* Laredo is 150 miles inland.

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the overwhelming bulk of coffee shipments from Mexico to the United States through Laredo calls for delivery of coffee before delivery of sight draft and documents; with payment to be made only when the documents are finally received by the buyer. The description of the course of dealings set forth in paragraph 16 of the Bloom affidavit is the practice only for the relatively small percentage of Mexico-to-United States coffee sales which move by ocean vessel, although it continues to be the practice, naturally, for ocean vessel shipments from Mexico to other parts of the world.*

Sprague & Rhodes' avoidance of payment.

26. It is not true, as Bloom declares (paragraph 27 of his affidavit) that Sprague & Rhodes first heard about the shipment of 6,000 bags "on or shortly before September 10, 1975". In accordance with Instituto's invariable practice, Guzman was at once advised by telephone upon delivery of the coffee in Laredo. Moreover, as soon as the Instituto received the certificate of arrival from Gilbert's International Warehouse certifying to delivery of the 6,000 bags of coffee to Carrillo, it prepared its sight draft and other documents proving the delivery, in order to send them through bank channels to Sprague & Rhodes. At this point, no payment was anticipated from Sprague & Rhodes until the sight draft had actually been received by it.

27. However, on August 25, 1975, the Instituto was advised by its bank, Banco Internacional, S. A., that it had received from Sprague & Rhodes a credit for Instituto in the amount of \$120,933.02. The notification which In-

* Of course, in exports to all other countries, the payment standard is still "sight draft against ocean bill of lading".

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stituto received was accompanied by an August 22, 1975 telex from Sprague & Rhodes' bank, Irving Trust Company, which advised that such payment was "subject to final payment". Thus, Instituto was advised (again by Sprague & Rhodes' banking agents) that the payment received was in fact only a partial payment, and that final payment would be forthcoming. Attached collectively as Exhibit G to these affidavits are the advice from Banco Internacional and the related telex from Irving Trust Company.

28. Accordingly, Instituto revised its sight draft to reflect the balance due of \$606,948.74 and on August 28, 1975 transmitted that sight draft as aforesaid with its commercial invoice No. 0545, clearly stating the computation of the amount demanded in the draft. Copies of the sight draft and of said invoice are attached as Exhibits H and I to these affidavits.

29. I have been unable to ascertain why Sprague & Rhodes receded from its August 22, 1975 commitment to follow its first payment with the "final payment". No explanation has ever been offered to me by Sprague & Rhodes. Nor has Sprague & Rhodes ever explained to Instituto why, in the face of the confirmed receipt by it from Instituto of the 6,000 bags, it scattered five-sixths of the sum it paid to companies which had not even demanded payment. Whatever the reason may be, Instituto has provided Sprague & Rhodes with a forum for presenting a defense by the action which it commenced in the Superior Court of the Federal District of Mexico.

The baseless claims that Instituto has already been paid.

30. Although issues of payment are of course questions solely within the competence of the trier of fact, and can

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have no bearing on the determination of the arbitration and stay issues raised by Sprague & Rhodes' petition, I am nevertheless exasperated at the efforts Sprague & Rhodes has made to persuade this Court that Sprague & Rhodes' balance due has already been discharged. To be sure, Sprague & Rhodes has since last September been pressing Guzman for payment; but the only payments which Guzman has chosen to make are of Guzman's own obligations to Instituto.*

31. Although Guzman had been dealing with the Instituto for only a year before these events, he had incurred very extensive personal obligations arising out of purchases of coffee made by his own companies, AGSA and Frontera, for domestic consumption. These obligations amounted to several hundred thousand dollars. All of the payments which the Instituto has in fact received directly from Guzman were at all times attributed by the Instituto and by Guzman to his own personal obligations. Attached as Exhibit J to these affidavits is an agreement between the Instituto and Guzman dated February 25, 1976 confirming this fact.

32. Of course, when Sprague & Rhodes initially dishonored the sight draft, we in the Institute turned to Guzman to ask him if he was holding the money for Sprague & Rhodes for payment to us. Since Sprague & Rhodes had identified Guzman as its agent, this was only natural.

This expectation seemed to be realized when on September 26, 1975 Guzman in fact delivered his check for the full amount of Sprague & Rhodes' debt, drawn on Union National Bank of Laredo. That was the check, which when presented for payment, was returned for insufficient funds.

* Except for the issuance by Guzman to Instituto of one check on September 26, 1975 for the full \$606,948.74 debt -- but that check was dishonored for insufficient funds (See paragraph 32 below).

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Attached collectively as Exhibit K to these affidavits are copies of the check and the cancelled receipt given to Guzman in connection therewith. Upon such event, Instituto insisted that Guzman acknowledge himself to be a guarantor to Instituto of Sprague & Rhodes' debt. The February 25, 1976 agreement (Exhibit J) reflects this. But this surely does not relieve Sprague & Rhodes itself of any part of such liability.

33. Nor is Sprague & Rhodes innocent of knowledge as to these payment matters. It is my understanding that Sprague & Rhodes itself applied pressure to Guzman, and consequently received from him payments in excess of \$100,000 in settlement of Guzman's obligations to Sprague & Rhodes arising out of these transactions. Small wonder that I misunderstood Sprague & Rhodes' intent when it offered only \$30,000 in settlement of the Instituto's \$606,000 claim, together with an assignment of whatever rights Sprague & Rhodes might have against Guzman!

Sprague & Rhodes' baseless fears of persecution in Mexico.

34. Sprague & Rhodes is, as the Bloom affidavit declares, a member of the GCA. Members of the GCA contract with Instituto for the purchase of hundreds of thousands of bags of coffee each year. If there were any cause for concern that the Instituto might deal unfairly with, or connive at persecution of, GCA members, one would think that Mr. Bloom could readily obtain a supporting affidavit to such effect from one of the major coffee importers listed in paragraph 9 of his affidavit. The fact is, however, that the Instituto enjoys uniformly good relations with its GCA customers precisely because it has an unsullied reputation for fair dealing.

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35. Litigation or arbitration of disputes between the Instituto and its export customers is virtually unheard of because, whenever such disputes have arisen in the past, they have been swiftly adjusted privately and in the best of faith. It was with such an objective in mind that I myself came to New York in November, 1975 to meet with Mr. Bloom and his associates concerning Sprague & Rhodes' open account. Thus, when Sprague & Rhodes' sole response to the detailed presentation which I made of the basis for Instituto's claim was offhandedly to offer a payment of less than five percent of the amount owing, together with an assignment of Sprague & Rhodes' rights to pursue its claims against its agent arising out of its carelessness, it is small wonder that I reacted perhaps too hastily in ascribing improper motives to the proposal.

36. The telex which I sent in anger (Exhibit 14 to the Bloom affidavit) has, of course, never been acted upon by me; and Mr. Bloom and Sprague & Rhodes are well aware that this is so. Their counsel in Mexico (and, as is discussed below in paragraphs 43 to 45 of this affidavit and in the affidavit of our Mexican counsel., Lic. Jorge Leon Orantes V. of the international law firm Goodrich, Dolton, Little & Riquelme, they have retained both international and domestic law firms here) have surely ascertained that I have filed no criminal complaints, and that I have never complained about Sprague & Rhodes to the coffee regulating agencies of other coffee producing nations. As a GCA member, Sprague & Rhodes of course knows that no "denunciation" has been made before the ICO, the GCA or any other organization.

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37. In fact, I have never even informed any of my colleagues or superiors in Instituto of my heated response to so niggardly and insulting a settlement proposal. I declare now, under oath, that I have not and will not attempt to commence any proceedings against Sprague & Rhodes or its officers arising out of that settlement proposal; so that (to the extent they really do claim to fear any such action when they come to Mexico to defend against the pending litigation there) their fears may be annulled.

38. It bears mention that officials of Sprague & Rhodes, its counsel have told our Mexican counsel, Mr. Orantes, that if I ever come to New York, they will prosecute me for defamation. I shall of course, by the same token, expect assurance from Sprague & Rhodes that no such step will be taken.

39. It is distasteful to have to dignify the outlandish charge made by the Bloom affidavit that Mexican courts do not, and in this instance will not, fairly resolve the pending dispute. The Orantes affidavit (paragraphs 13 to 18 thereof) provides significant rebuttal to such unsupported claims. As a lawyer myself, particularly as one previously employed as a legal representative in Mexico by a major multinational United States corporation, I know that the officers and employees of Sprague & Rhodes or any other United States concern doing business with Mexico can move freely in and out of Mexico to prosecute or defend claims against Mexican government agencies or private citizens utterly without fear of restraint, much less risk of "protective custody". The long and cordial relationship between our two countries, their heavy commercial intercourse with each other at every level, testify to the baselessness of Bloom's alleged fears.

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40. The litigation commenced in our Superior Court was, as Mr. Quanten has declared, properly brought. The period for submission of evidence in the litigation continues open until mid-September; and all that Sprague & Rhodes needs to do is enter an appearance through counsel duly authorized, and submit such proofs as it may claim to have in defense of the Instituto's demand. The claim that its officers will be arrested or detained is unsupported by citation to a single case, instance, statute or ruling where such a practice was employed. All that Sprague & Rhodes stands to lose is the money it owes Instituto; all it will have to pay is a judgment duly obtained after the court passes upon the evidence.

41. I must emphatically reject the charge made by paragraph 45 of the Bloom affidavit -- the charge that Instituto has threatened in its complaint in Mexico to pursue penal sanctions against Sprague & Rhodes arising out of Guzman's payment procedures. The Bloom affidavit quotes only a portion of paragraph XIII of the Complaint in the Mexican litigation. The quotation is out of context, for the immediately preceding section of paragraph XIII specifically declares that the conduct complained of was Guzman's drawing a check against a known insufficiency of funds in his account. I am told by our New York counsel that the intentional issuance of a check not covered by deposits is criminal conduct in New York as well as in Mexico. At all events, the sole meaning of the second section of paragraph XIII (the part quoted out of context by Mr. Bloom) was that I reserved the privilege of filing a criminal complaint against Guzman if the proofs establish that he wrote such check with knowledge that it would bounce. The court can read the Complaint

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in translation: it is exhibit E to these affidavits.

42. Since Sprague has written no check which bounced -- indeed, it has refused to write any checks for the \$606,948.74 which it owes -- there is no way in which I could have intended to reserve the right to charge Sprague & Rhodes or its officers. Sprague & Rhodes has waived the relief it seeks here.

43. Sprague & Rhodes has already caused an attack to be made upon the competency of the Superior Court of the Federal District. As the Orantes affidavit recites (paragraphs 8 to 12 thereof), on June 3, 1976, a partner in the Mexican law firm of Sepulveda (a group closely associated with Baker & McKenzie) filed a petition on Sprague & Rhodes' behalf in the Mexican litigation. The petition, which questioned the jurisdiction of the court, was accepted by our court for consideration on June 15, 1976, subject to the fixing of bond. (Bond was made necessary because Sprague & Rhodes withheld sworn authorization for the Sepulveda lawyer's intervention).

44. For reasons not revealed, that lawyer declined to pursue the matter; and his petition was adjudged "not accepted". A translation of each of the court documents generated by this singular intervention is attached as Exhibit L to these affidavits.

45. As Mr. Orantes has emphasized, in such manner Sprague & Rhodes had available to it the opportunity (i) to question the letters rogatory, (ii) to question the convenience of the forum, and (iii) to petition for arbitration either under Mexican internal law or the international Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Should Sprague & Rhodes be permitted

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a second opportunity? What requisite of United States law or common sense compels such a result?

Termination of the Mexican action would be grossly unfair, unwise and inconvenient.

46. From every aspect, Mexico is a far better forum for a trial on the merits. Mexico will provide a much less expensive forum for Instituto. The witnesses and documents are largely here. The transactions occurred here. The commercial law of Mexico governs the transaction wherever it may be tried.

47. It would be extremely costly for the Instituto to have to pursue its claim in New York. We have New York counsel only for this matter; and we would not have engaged them if Sprague & Rhodes had paid for the coffee we delivered. We have no facilities in that city which could aid us in such litigation. Our New York office, at 3 West 57th Street, is a tiny office serving promotional and information purposes only. It has only three non-clerical employees, who have never had the authority (i) to make or approve sales, (ii) to quote prices, (iii) to inspect coffee, (iv) to resolve disputes arising out of sales, or (v) to accept payments. In short, no one in that office has ever had authority to do more than publicize the availability of Mexican coffee; as Sprague & Rhodes well knows.

48. Sprague & Rhodes already has engaged prominent Mexican counsel, who are quite familiar with the circumstances and the file. Sprague & Rhodes' retainer of the Baker & McKenzie firm, Dean Jimeno and the Sepulvedo group shows that it is quite prepared to hire law firms everywhere by twos and threes to avoid having to pay the money it owes us.

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49. It must be emphasized that Guzman is also a defendant in the Mexican litigation. His testimony will be of great importance in our obtaining a judgment, and this Mr. Bloom knows quite well. If this dispute were to be heard in New York, Guzman could not testify except by written deposition.* In view of his obvious misconduct (and even Mr. Bloom acknowledges this), direct examination of Guzman would be indicated; but Guzman himself has clearly not submitted to arbitration in New York and we could not compel his attendance there.

50. Moreover, the United States District Court may be powerless to stay or stop the Mexican litigation. Our Superior Court is the independent judicial arm of a separate sovereign. Both it and the Instituto are obliged by Mexican law to proceed with the evidence stage and other stages of the action.

a. Should Instituto be exposed to the loss of its claim against Guzman? If stayed, the Instituto will be prevented or at least restricted in offering its full proofs.

b. Should Instituto's officers -- who are employees of government agency -- be exposed to public criticism or censure for desisting from claims brought in Mexican courts with respect to a Mexican transaction?

c. Should the United States District Court expose both Instituto and Sprague & Rhodes to the risk of trials in both jurisdictions, and the issuance of possibly inconsistent judgments? As Mr. Orantes has pointed out, regardless of arbitration the Mexican court may render a judgment against Sprague & Rhodes which other

* Even if we were willing to see him cross the borders of Mexico (and, understandably, we are not) he would not submit to arbitration.

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nations -- including the United States -- would have to respect. (Orantes affidavit, paragraph 3).


51. Only by permitting the Mexican litigation to proceed can these results be avoided.

Summary.

52. The Sprague & Rhodes position is baseless. There has never been transmittal of a written arbitration provision by it to Instituto in connection with these purchases. In fact, Sprague & Rhodes had apparently not dealt in Mexican coffee, nor purchased anything from Instituto, for four years or more; hence there was not even a current course of dealings between these parties.

53. Mexican jurisdiction rests upon a proper application of Mexican law; and a proper issuance of letters rogatory. Mexico is not merely a more appropriate forum; it is probably the only forum which can properly resolve the issues raised. Sprague & Rhodes has already petitioned in the Superior Court, through Mexican counsel, thus showing its awareness that the jurisdictional and arbitration questions can be adjudicated fairly by it. The charges made that Sprague & Rhodes personnel will be in some kind of jeopardy if they come here to litigate, and that Mexican courts are inherently hostile to United States citizens, are false and base.

WHEREFORE, I respectfully request that an order of judgment be rendered dismissing the petition and denying the relief requested in petitioner's application.


Hector Garza Rodriguez

to before me this 6
day of August, 1976.


LANA CHUMLEY
Vice Consul 23-

United Mexican States
Federal District
City of Mexico
Embassy of the United
States of America } ss.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE SPRAGUE & RHODES COMMODITY : 76 Civ. 3128
CORPORATION, : (LWP)

Petitioner, :
-against- : AFFIDAVIT OF EDUARDO
INSTITUTE MEXICANO DEL CAFE, : GONZALEZ A. IN OPPOSI-
Respondent. : TION TO PETITION

----- x

UNITED MEXICAN STATES)
FEDERAL DISTRICT)
CITY OF MEXICO) ss.:
EMBASSY OF THE UNITED)
STATES OF AMERICA)

EDUARDO GONZALEZ A., being duly sworn, says:

1. I am sales manager of Instituto Mexicano del Cafe ("Instituto"). This affidavit is proffered in opposition to the petition of The Sprague & Rhodes Commodity Corporation ("Sprague & Rhodes") herein.

2. As sales manager, I am fully familiar with the Mexican coffee market, and its standard procedures for negotiation and implementation of coffee sales both by the Instituto and by private coffee concerns in Mexico -- not only with buyers in the United States but worldwide. Further, as sales manager I have major responsibilities in the licensing of private Mexican concerns for the export of coffee, and in reviewing and passing upon specific export contracts made by private Mexican concerns.

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3. I have reviewed the provisions of the affidavit of Sprague & Rhodes' Vice President, Jack Bloom (the "Bloom affidavit"), which describe what Mr. Bloom apparently believes to be the way in which the coffee export business is conducted in Mexico. Mr. Bloom's affidavit evidences a substantial lack of familiarity with the subject matter, perhaps because Sprague & Rhodes may not have dealt in the Mexican coffee market in recent years (except for the transactions now being litigated).

4. Mr. Bloom is misinformed as to (i) the usual methods for negotiating sales, (ii) the way in which coffee is allocated to international sales, (iii) the way in which coffee is delivered in accordance with international sales contracts with members of the Green Coffee Association of New York, Inc. ("GCA"), (iv) the manner in which payment is requested and made for United States sales, and (v) most importantly, the manner in which private Mexican concerns are licensed to export coffee.

4. The Bloom affidavit implies that virtually all Mexican coffee sales are made on the GCA contract form; and that the shipping and payment practices are as described in paragraphs 9 and 16 thereof. This is not so: virtually no sales are made on the GCA form, although many are subsequently confirmed by it. In 1970 and 1971, when Sprague & Rhodes apparently last had dealings in Mexican coffee,

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the overwhelming proportion of exported Mexican coffee was for delivery to the United States. Now, with Mexico having risen to fourth largest coffee exporter in the world, only slightly more than one half of our exports are to the United States. Therefore, the Instituto and other Mexican exporters confirm sales of Mexican coffee on a great many different kinds of forms, and not only the GCA forms.

5. Moreover, since the development of Telex communications and the improvement of telephonic contacts, a substantial proportion of Mexican coffee contracts are negotiated by Telex or direct by telephone, without any other communication or confirmation. In Mexico and elsewhere, my experience is that the coffee export business operates substantially upon the good faith of word-of-mouth transactions between or among people of good reputation.

6. GCA contracts are of course routinely sent by GCA members who buy from the Instituto, in confirmation of sales transactions; but because the transactions have frequently already been executed (that is to say, the coffee has already been delivered), or because the transaction was previously confirmed by Telex, the GCA contract seldom figures as a guideline to the transaction..

For example, the printed form requirement of telegraphic notice at time of shipment, stressed as an important operative provision by paragraph 10 of the Bloom affidavit, is seldom, if ever, utilized in the standard

A 128

transaction between Instituto and its usual United States customers. Instead, word of mouth confirmation of shipment is invariably given by Instituto to the agent in Mexico City (if any), or the Instituto salesman involved simply telephones the buyer in the United States. Word was surely given to Guzman in August, 1975.

7. The second major inaccuracy in the Bloom affidavit relates to the manner in which coffee is delivered to the United States. In 1970 and 1971, most coffee was delivered by ocean vessel. Now, well over 80% of all United States purchases of Mexican coffee are delivered by truck or rail through Laredo. This important change has given rise to a whole series of alterations in the way in which coffee exports between our two countries are handled. This fact has significantly altered the coffee export business between our countries, in respect of speed of delivery, shipment facilities and payment technique.

8. Because of the unique feature of a common border existing between the producer and the consumer nation, and because large coffee orders are satisfied by small-lot deliveries from many different coffee-growing districts in Mexico, it is impractical for the Mexican exporter to attach a sight draft to a bill of lading covering the entire shipment. Thus receipt of payment before the coffee is delivered from dozens of trucks to specified warehousing

A 129

points in Laredo, Texas, on the American side of the border; and a certificate of arrival is delivered to the Mexican exporter. The customs broker who acts as agent for the United States buyer tests the coffee; and then accepts delivery of it. He confirms receipt to his United States principal, the buyer; but the latter awaits the transmission of a sight draft, a copy of the certificate of arrival and other appropriate export documents from the Mexican exporter.

9. The Bloom affidavit is incorrect in declaring (paragraph 13 thereof) that coffee being sold by some Mexican exporter other than Instituto can at times arrive at the point of delivery, in bags or otherwise, under the control of Instituto. Mexican export procedures flatly prohibit this; and the waybills of the trucking company and the certificate of arrival and export permit clearly show the source of all exported coffee. The coffee brokers in Laredo (such as Carillo & Company, which represented Sprague & Rhodes' agent in Laredo, was instantly aware that the 6,000 bags it cleared through customs came exclusively from Instituto as exporter.

10. The payments which Sprague & Rhodes claims that it made on August 22, 1975 in good faith to Cafes de la Frontera ("Frontera") (for 3,000 bags), to Manuel Panagos Lara ("Panagos") (2,000 bags) and to Instituto (1,000 bags) were obviously made without the receipt of any documentary

A130

demand or draft from any of the three payees. As pointed out at paragraph 13 of the affidavit of Lic. Hector Garza Rodriguez, Instituto's general counsel, neither Panagos nor Frontera was licensed to export such coffee, as Sprague & Rhodes could have learned if it had simply asked.*

11. Since neither Panagos nor Frontera was licensed to export such coffee and since neither of them held any export permits, or any proofs of authority to sell, or certificates of origin, or certificates of arrival, all of which are the usual and necessary documents against which payment is made, I do not understand how Sprague & Rhodes determined to whom its money should be sent. The Instituto sent its sight draft to Sprague & Rhodes (Exhibit to these affidavits) through its usual bank channels on August 28, 1975 (not September 10th as the Bloom affidavit incorrectly declares (par. 27 thereof)). Attached to it were all of the required proofs of delivery, receipt and export licensure. The accompanying commercial invoice gave credit to the part payment which Sprague & Rhodes had already made.

12. This procedure for requesting payment is the usual method used by the Instituto for collecting the sales price on coffee sold through Laredo.

13. Another major inaccuracy of the Bloom affidavit is its apparent misconception of the way in which export licensure is handled in Mexico. It is unheard of in

* Neither Guzman himself nor his other company, Cia. Mexicana de Representaciones A.G., S.A. ("AGSA") was licensed for export, either. In fact, until the disputed purchases were made, our records disclose no dealing at all by Guzman with Instituto in export coffees.

A B 1

the coffee industry for a coffee broker in the United States to issue standard form coffee purchase contracts to companies it does not know, without ascertaining that the contemplated seller has (a) already acquired ownership of the coffee, (b) already obtained an export license for the coffee, and (c) that it has a reputation for honorable dealing in the export market. Moreover, Mexican coffee export regulations prohibit submission of a coffee purchase contract "for registration purposes only", as Sprague & Rhodes alleges it intended to do; and thus Sprague & Rhodes was actually writing confirmation contracts on sales it had not even negotiated with companies it had presumably never heard of before!

14. The well-established export regulations, which are on file with the International Coffee Organization*, require all private concerns desiring a license to export Mexican coffee first to prove to Instituto that they have already purchased the coffee in question. In relevant portion, the Information Summary provided by Instituto to ICO declares:

"In Mexico, the process to obtain Export Licenses begins once exporters have filled out a form called 'Coffee Stocks Declaration'.... Based on these declarations [regional] Coffee Inventory Commissions are formed. ... These Commissions issue a second document, i.e., Inventory Certificate....

Comparing the total amount of coffee available with the amount the [Instituto] Board considers suitable to export during a quarter (this quota is compared against the quarterly quota determined by the ICO), we obtain a percentage which shall be

* All coffee dealers, whether governmental agencies or private organizations, are members of the ICO.

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individually applied to the inventory of every exporter and is made known to all exporters who take part in inventory checking... This way we come to a third document, i.e., the Export License, which is in force for only a quarter, the one it was granted for."

The reason for this requirement of established inventory is obvious: it is the policy of the Mexican government to maintain satisfactory export prices for Mexican coffee. The price could not be pegged and the growers could not be supported in their profit if anyone, whether or not he owned coffee, could obtain a license for the registration of a sales permit or purchase contract and then peddle such export rights to speculators.

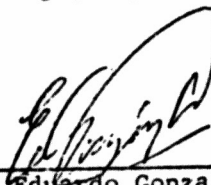
15. Instead, our procedures mandate that the Instituto, in its capacity as regulator of coffee exports, be notified within 72 hours by each licensed exporter when the terms of an export sale have been agreed upon. The relevant portion of the Information Summary on file with the ICO reads:

"Private exporters register their foreign sales with the INMECAFE. Once the amount of export quota has been determined the private exporter is granted an Export License (or several, if he exports coffee through different borders or customs). Once he has the corresponding license, he proceeds to offer his coffee to different consumers. Once a transaction is agreed, he must proceed to report it to the INMECAFE through a 'Sale Notice' within the next 72 hrs. Basically, the purpose of Sale Notices is to control the price of every transaction to keep them within reasonable market levels. These document includes information on the buyer, destination, price, volume quality and port of embarkation. Once the Institute authorizes a Sale Notice the exporter (himself, his agent or customs agent) goes to the port of embarkation to present the corresponding export license and the authorized sale notice before an INMECAFE agent, who, if all documents are in due form, shall proceed to issue a Certificate of Origin. At the same time, the exporter must proceed to register his Sale Contract no later than 20 days after the sale notice is authorized."

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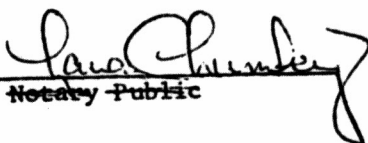
Thus, coffee export sales are cleared by the Instituto promptly upon negotiation of its basic terms. Formal confirmations, such as GCA forms, are registered within 20 days after the sale notice -- not by the buyer, but by the exporter for the purposes of record-keeping by Instituto.

16. In light of these procedures, it is apparent that the Bloom affidavit (and possibly Sprague & Rhodes' entire petition) is based upon faulty information and gross misconceptions about the Mexican coffee market. Instituto complied fully with these procedures at all times in connection with the transactions at issue. Only Sprague & Rhodes, through ignorance, negligence or design, departed from them.



Eduardo Gonzales A.

worn to before me this 6th
day of August, 1976.


Notary Public

LANA CHUMLEY
Notary Public

A 134

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SPRAGUE & RHODES COMMODITY : 76 Civ. 3128
CORPORATION, : (LWP)
:
Petitioner, :
:
-against- : AFFIDAVIT OF
: ROBERT M. BLUM
INSTITUTO MEXICANO DEL CAFE, :
:
Respondent. :
----- x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT M. BLUM, being duly sworn, says:

1. I am a member of the firm of Silberfeld, Danziger & Bangser, New York counsel for respondent. This matter has been in my charge.

2. Because all the officers and employees of respondent who have knowledge of this dispute are in respondent's principal office in Mexico City, and because most of the documents relating to the dispute are in Spanish, numerous technical difficulties have been experienced in preparing respondent's defense to the petition. As a result, the affidavits of Messrs. Garza, Gonzalez and Orantes were prepared several days before the date stipulated by petitioner's and respondent's counsel for their service upon petitioner; then were transmitted to Mexico by photo-Telex, and were there

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translated into Spanish so that they could be appropriately understood before retyping in English for execution. This cumbersome procedure made impossible the addition of reference to various documents not at first referred to in those affidavits as exhibits.

3. The Court's leave is therefore respectfully requested for the inclusion by attachment to my affidavit of certain documents referred to in the Garza, Gonzalez and Orantes affidavits, or otherwise arising out of the transactions at issue, and which I believe will be useful to the court in arriving at a fair conclusion.

4. Accordingly, attached to these affidavits on behalf of respondent are the following additional exhibits:

Exhibit M: Certificate of Arrival

This document evidences delivery to Carrillo of the 6,000 bags of coffee for petitioner by respondent.

Exhibit N: Internal Control Form (Forma de control y pedidos) with respect to the July 29, 1975 transaction

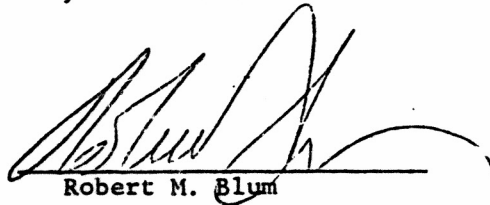
The original of this form is a part of Instituto's records. The form serves as the internal control document for implementing the transaction.

Exhibit O: Internal Control Form (Forma de control y pedidos) with respect to the August 12 or August 13, 1975 transaction

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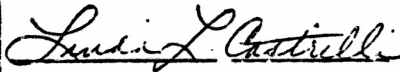
Exhibit P: Penagos coffee export permit for 1,000 bags
June 1975, and attached documents respecting
shipment.

All of the foregoing documents were specifically
identified to me as authentic by either Mr. Garza or Mr.
Gonzalez.



Robert M. Blum

Sworn to before me this
5th day of August, 1976.



LINDA L. CASTELLI
Notary Public, State of New York
No. 31-4513125
Qualified in New York County
Commission Expires March 30, 1977

A 137

4-A

VXD
BEMEXCAF MEXWTC NFDPCN SH
OXLPQU

BEMEXCAF MEX
232951 SPRA UR

7/31/75

THIS IS SPRAGRODES NY - J BLOOM

ATTENTION: MR AGUILAR - SALES DEPARTMENT

THIS IS TO CONFIRM THAT ARMANDO GUZMAN IS OUR REPRESENTATIVE
IN MEXICO AND IS ALSO AUTHORIZED TO PASS OFFERS AT OUR NAME
WHEN INSTRUCTED BY US. WE ARE ALSO SENDING CONTRACT 5437-F
COVERING 3000 BAGS MEX/PW AT 80.00 DLLS FOB LAREDO.

THE COMPLETE DETAILS SHOULD BE GIVEN BY OUR REPRESENTATIVE
AND ON THE CONTRACT.

3,
BEMEXCAF MEX

END

BEMEXCAF MEX

BEMEXCAF MEX
232951 SPRA UR

EXHIBIT A

R

A. 138

16/12 17.38
BEMEXCAF MEX
BEMEXCAF MEX
SPRARD NYK

12/16/74

THIS IS SPRAGRODES NY - JACK BLOOM

ATTN: MR HECTOR GONZALES ARDINES

GOOD MORNING. WE HAVE BEEN REQUESTING SAMPLES OF YOUR MANY STOCKLOTS OF SPECIALTY COFFEES - PAST CROPS, LOW GRADES, ETC THROUGH OUR AGENT - MR ARMANDO GUZMAN.

WE HAVE HAD EXCELLENT RESULTS WITH THE INSTITUTO'S STOCKLOT COFFEES DURING PAST YEARS AND HOPE THAT YOU CAN ARRANGE TO GET SOME OF THESE SAMPLES TO ARMANDO - SO THAT WE MAY AGAIN GET STARTED.

WOULD LIKE TO RESUME ACTIVITIES WITH INSTITUTO SO HOPE YOU CAN GET US STARTED - AS ABOVE.

WITH REGARDS

END

BEMEXCAF MEX.....5

EXHIBIT B

A. 139

(ENGLISH VERSION)

COMPANIA MEXICANA DE REPRESENTACIONES AGSA

Homero 538-301 Mexico 5, D.F. Phones: 531-24-42 and
531-64-73

(Letterhead)

Mexico, D. F., July 29, 1975

INSTITUTO MEXICANO DEL CAFE
Reforma # 300
Mexico, D. F.

Attn.: Mr. Agustín I. Aguilar N.; Esq.
Sales Department

Dear Sirs:

In my capacity of representative of Sprague &
Rhodes Com. Corp., I am pleased to confirm hereby the follow-
ing acquisitions:

3,000 bags Prime Washed Coffee, new crop, at a price of
\$80.00 Dlls./100 pounds, F.O.B. Laredo, Texas

Terms of Payment: Sight Draft against bill of lading, or
telephonic transfer of funds to the account
and bank which you indicate (against bill of
lading).

Delivery: As soon as possible.

The above shall be confirmed by the Purchase Agree-
ment which is to be remitted by the buyer and shall also be
confirmed by telex.

With no further business to deal with, we remain

Yours very truly,

(Signed, illegible)

ARMANDO GUZMAN VILLANUEVA.

cc: SPRAGUE & RHODES

EXHIBIT C

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ROBERTO GOMEZ MAQUEO, Expert Translator duly appointed by the Superior Court of Justice of the Federal District of Mexico, hereby CERTIFIES: That the foregoing is a true and correct translation to English of the original document in Spanish, to the best of his knowledge and belief.

This certification is issued in Mexico City, Federal District, on February 25, 1976.



ROBERTO GOMEZ MAQUEO
GOOR - 180717

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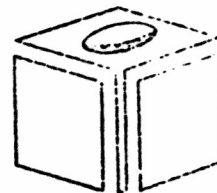
2-A

MEXICANA DE REPRESENTACIONES AGSA

538-301

MEXICO 5, D. F.

TELS. 531-24-42 Y 545-64-73



EXPORTACION-IMPORTACION
COMPRA - VENTA Y COMISION DE PRODUCTOS EN GENERAL

México, D.F., 29 de julio de 1975.

INSTITUTO MEXICANO DEL CAFE.
Reforma # 300,
México, D.F.

AT'N: SR. LIC. AGUSTIN I. AGUILAR N.
DEPARTAMENTO DE VENTAS.

Estimados señores:

Por medio de la presente, y en mi calidad de -
representante de la Cía. "Sprague & Rhodes", Com. Corp., me permito-
confirmarles la siguiente operación de compra:

3,000 sacos Café Prima Lavado, cosecha nueva, sano
al precio de \$ 80.00 Dls X 100 libras.
F.O.B. Laredo, Texas.

Condiciones de pago: Giro a la vista, contra docu-
mentos de embarque, ó transferencia te-
lefónica, a la cuenta y Banco que uste-
des indiquen (contra documentos de em-
barque)

Entrega: Lo más pronto posible.

Lo anterior quedará confirmado en el contrato-
que está enviando la casa compradora; además de confirmación por te-
lex.

Sin más por el momento, quedamos de ustedes.

A T E N T A M E N T E

ARMANDO GUZMAN VILLARUEVA

c.c.p. SPRAGUE & RHODES.

AGV*/nmac.

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(ENGLISH VERSION)

CARRILLO & COMPANY
Custom Brokers
P.O. Box 1475 - 216 Salinas Avenue
Laredo, Texas 78040
NOV. 28, 1975

Our Re.: Confirmation of arrival of 6,000 green coffee bags sold by the INSTITUTO MEXICANO DEL CAFE to Sprague & Rhodes, New York. (Order No. 3164)

INSTITUTO MEXICANO DEL CAFE
Reforma 300, 11th. Floor
Mexico 6, D. F.

Att'n.: Mr. Hector Garza R., Esq.

Dear Sirs:

We are pleased to state that CARRILLO & COMPANY at Laredo, Texas, received, processed and dispatched before the U.S.A. Custom 6,000 - 70 kilo bags of Prime Washed Coffee, sold by INSTITUTO MEXICANO DEL CAFE to Sprague & Rhodes, Corp. in New York, N.Y. and that the following operations were carried out by instructions and at the request of our client, Sprague & Rhodes:

Lot No.:	Client:	Transportation:	Destination:
548 (500)	Hills Bros.	Railroad	Edgewater, N.J.
549 475	Coca Cola Co.	Truck (Brown)	Omaha
549 25	Hills Bros.	Railroad	Edgewater, N.J.
7121 500	Coca Cola Co.	Railroad	Omaha
9090 250	Coca Cola Co.	Truck (Brown)	"
9090 250	Hills Bros.	Railroad	Edgewater, N.J.
9091 500	Coca Cola Co.	Railroad	Omaha
9092 500	" " "	"	"
9093 500	Hills Bros.	"	Edgewater, N.J.
9095 500	Coca Cola Co.	"	Omaha

Lots 7119 500 (delivered to Jovita Pérez, Custom Broker in
7120 500 (Laredo, Texas by instructions of Sprague &
7122 500 (Rhodes, for reshipment according to ins-
9094 500 (tructions.

We are also pleased to mention that Sprague & RHodes has paid Carrillo & Company Custom Brokers the expenses and fees for processing the 6,000 bag prime washed coffee shipment hereinabove mentioned. In case you would require additional information, please advise.

Very truly yours,

CARRILLO AND CO.

Translator's Note:

6 Bills of Lading are enclosed herewith.

EXHIBIT D

A 144

APARTADO POSTAL NUM. 304
NUEVO LAREDO, TAMPS., MEXICO*Carrillo & Company*

U. S. CUSTOMHOUSE BROKERS

U. S. CUSTOMS BONDED WAREHOUSES

P. O. BOX 1475

216 SALINAS AVENUE

LAREDO, TEXAS, 78040

Nov. 28, 1975

YOUR REFERENCE _____

OUR REFERENCE _____

Confirmacion de arri-
de 6,000 sacos Cafe
Verde vendidos por
Instituto Mexicano
Cafe a Sprague & Rh
New York
(Orden No. 3164)

Instituto Mexicano del Cafe
Reforma 300 11 avo. Piso
Mexico 6, D. F.

Atencion Sr. Lic. Hector Garza R.

Estimados senores:

Por medio de la presente hacemos constar que Carrillo and Company en Laredo, Texas, recibio, trumito y despacho ante la Aduana Americana 6,000 sacos de Cafe Prima Lavado de 70 kg. vendidos por el Instituto Mexicano del Cafe a Sprague & Rhodes Corp. de New York, N. Y., por lo que fueron realizadas las siguientes operaciones, por instrucciones y orden de nuestro cliente Sprague and Rhodes:

No. Lote	Cliente	Transporte	Destino
548 (500)	Hills Bros.	Ferrocarril	Edgewater, N. J.
549 475	Coca Cola Co.	Camion (Brown)	Omaha
549 25	Hills Bros.	Ferrocarril	Edgewater, N. J.
7121 500	Coca Cola Co.	Ferrocarril	Omaha
9090 250	Coca Cola Co.	Camion (Brown)	"
9090 250	Hills Bros.	Ferrocarril	Edgewater, N. J.
9091 500	Coca Cola Co.	Ferrocarril	Omaha
9092 500	" " "	" "	"
9093 500	Hills Bros."	" "	Edgewater, N. J.
9095 500	Coca Cola Co.	" "	Omaha

Lotes 7119 500 (puestos a disposicion de Jovita Percz Agente Aduanal
7120 500 (en Laredo, Texas por instrucciones de Sprague &
7122 500 (Rhodes para ser reexpedidos segun ordenes recibidas.
9094 500 (

En igual forma hacemos constar que Sprague & Rhodes ya liquido a Carrillo and Company como Agente Aduanal, los gastos y honorarios por el manejo tramitacion y envio de los 6,000 sacos de Cafe Prima Lavado anteriormente mencionados.

En caso de mayor informacion estamos a sus apreciables ordenes.

Atentamente,

Carrillo
CARRILLO AND CO.

1

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Bill of Lading—Original—N 1 Negotiable—Domestic

MEXICAN RAILWAY COMPANY

COMPANY

SHIPPER'S NO

AGENT'S NO

LAREDO, TEXAS SEPT. 17, 1975 FROM SPRAGUE & RHODES & CARRILLO CO.

TO		COCA COLA CO. FOODS DIV.		9th and Jones St.	
ORIGIN		OMAHA		STATE NEBRASKA	
ROUTE		TH SP KCS UP		ORDER NO	
CARRIER		MEXICAN RAILWAY COMPANY		CAR NO 7017	
NO	PKGS	DESCRIPTION OF ARTICLES SPECIAL MARKS AND EXCEPTIONS	WEIGHT IN LBS TO CONT	CLASS	CO
500		Sacks Green Coffee Marks: Lot 000001 Contract No. 2209	77,000		
FROM MEXICO					
IMPORT SHIPMENT					
LOADED AT LAREDO, TEXAS					
EX MEXICO VIA TRUCK					
SEAL NO. 236269/69					
MAIL COPIES OF THE BILL OF LADING AND FREIGHT					
CHARGES TO THE COCA COLA CO. OMAHA, NEBRASKA DIV.					
P.O. BOX 2079 HOUSTON, TEXAS 77001-ATTEN:					
TRAFFIC DEPT.					
PLEASE RUSH PLEASE RUSH PLEASE RUSH					
TO BE PREPAID					
COPY					

Sprague & Rhodes & Carrillo Co. Laredo Texas 78040

1

A 147

BILL OF LADING—Original—Not Negotiable—Domestic

SHIPPED 5 602

MEXICAN RAILWAY COMPANY

COMPAN

AGENTS 5 602

EDO, TEXAS SEPT. 17, 19 75 FROM SPRAGUE & RHODES & CARRILLO CO.

ORDER TO		COCA COLA CO. FOODS DIV.		2th and Jones St.	
DESTINATION		OMAHA		STATE NEBRASKA	
ROUTE		TH SP ECS UP		ORDER NO	
DELIVERING CARRIER		CAR INITIAL		CAR NO 60237	
NO PAGE		DESCRIPTION OF ARTICLES, SPECIAL NOTES AND EXCEPTIONS		WEIGHT (LBS TO 100)	
500		Sacks Green Coffee Marks: Lot 9091 Contract No. 2899		77,000	
		FROM MEXICO			
		IMPORT SHIPMENT			
		LOADED AT LAREDO, TEXAS			
		EX MEXICO VIA TRUCK			
		SEAL NO. 286228/29			
		MAIL COPIES OF THE BILL OF LADING AND FREIGHT			
		CHARGES TO THE COCA COLA COMPANY FOODS DIV.			
		P.O. BOX 2079 HOUSTON, TEXAS 77001			
		ATTN: TRAFFIC DEPT.			
		PLEASE RUSH PLEASE RUSH PLEASE RUSH			
		WESTERN			
		COPY			
		Texas L			
		LAREDO, TEXAS			
		SEP 17 1975			
		J. C. CARRILLO, P.O.			
		LAREDO, TEXAS 78040			

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BILL OF LADING—Original—Not Negotiable—Domestic

SHIPPER'S NO.

MEXICAN RAILWAY COMPANY

COMPANY

AGENT'S NO.

TO: TEXAS SEPT. 17, 1975 FROM: SPRAGUE & RHODES & CARRILLO AND CO.

AGENCY TO		CCC COLA CO. FOODS DIV.		9th and Jones St.	
DELIVER TO		OMEGA		STATE TEXAS	
ROUTE		TM SP KCS UP		ORDER NO.	
DELIVERING CARRIER		CAR INITIAL		CAR NO.	
		SP		241772	
NO. PILES	DESCRIPTION OF GOODS, SPECIAL MARKS AND EXCEPTIONS		WEIGHT (LBS TO CAR)	CLASS	EX. CO.
500	Sack Green Coffee Mauden Lot 2413 / Contract No. 2399		77,000 #		
FROM: MEXICO					
IMPORT SHIPMENT					
LOADED AT LAREDO, TEXAS					
EX MEXICO VIA TELCE					
SEAL NO. 226230/31					
MAIL COPIES OF THE BILL OF LADING AND FREIGHT					
CHARGES TO THE CCC COLA COMPANY FOODS DIV.					
P.O. BOX 2079 HOUSTON, TEXAS 77001					
ATTN: TRAFFIC DEPT.					
PLEASE RUSH		PLEASE RUSH		PLEASE RUSH	
				WESTERN UNION	
<p>1. The shipper warrants that the goods are as described and that the weight is correct.</p> <p>2. The shipper warrants that the goods are free from all liens and claims.</p> <p>3. The shipper warrants that the goods are free from all taxes and duties.</p> <p>4. The shipper warrants that the goods are free from all other charges.</p> <p>5. The shipper warrants that the goods are free from all other charges.</p>					
<p>6. The shipper warrants that the goods are free from all other charges.</p> <p>7. The shipper warrants that the goods are free from all other charges.</p> <p>8. The shipper warrants that the goods are free from all other charges.</p> <p>9. The shipper warrants that the goods are free from all other charges.</p> <p>10. The shipper warrants that the goods are free from all other charges.</p>					
<p>11. The shipper warrants that the goods are free from all other charges.</p> <p>12. The shipper warrants that the goods are free from all other charges.</p> <p>13. The shipper warrants that the goods are free from all other charges.</p> <p>14. The shipper warrants that the goods are free from all other charges.</p> <p>15. The shipper warrants that the goods are free from all other charges.</p>					
<p>16. The shipper warrants that the goods are free from all other charges.</p> <p>17. The shipper warrants that the goods are free from all other charges.</p> <p>18. The shipper warrants that the goods are free from all other charges.</p> <p>19. The shipper warrants that the goods are free from all other charges.</p> <p>20. The shipper warrants that the goods are free from all other charges.</p>					
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COPY

TO: CCC COLA CO. FOODS DIV.
LAREDO, TEXAS
SEPT 17 1975
F.S. CARRILLO, JR.
1

—Sprague & Rhodes & Carrillo—
component post office address is: Laredo, Texas 78040

SAMPLE 5

MEXICAN RAILWAY COMPANY

COMPANY

ACIP 95-06

1948 SEPT. 13.

19 75 150MM

EDUARD & WHOPES 7 CARREIRO AND CO.

SENT TO WILLIS BROTHERS

EDMUNTER

STATE NEW JERSEY

country

~~TM ST SEN EAST ST LOUIS MO KENTINGTON EL NYSW DEL~~

ORDER NO

00194424G (A5010)

CAR Pictorial CD

CAR NO 654172

NO. 816-0

DISCUSSION OF ACT 15 SPECIAL MATTERS AND DECISIONS

• 2014-2015 100% 100%

409

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750	Seck's Green Coffee	Market: Lot 6222-250B
		Lot 6280-250B

115.500.8

2000

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LOADED AT LAREDO, TEXAS

22 2210: 711 TFLC.

SEAL NO. 295062/69

~~PLEASE RUSH PLEASE RUSH PLEASE RUSH~~

The description and location of the building is as follows:

WEST: RIVERVIEW, N. 7, DUTCH
According to the report.

COPY

[illegible]

§ The above Service and fee for shipment confirmed by the special agents referred to in the above letter is hereby received and all other requirements of the law are hereby acknowledged.

STANLEY & SONS A. C. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 9

TELEPHONE CO.
D. BREDO, TEXAS

COPY TO:

J. C. GORDON, JR., President

must be legibly filed in, to ink, in legible pencil, or in carbon and retained by the Agent

BROWN EXPRESS

RECEIVE, subject to the classifications and controls in effect on the date of the issue of this Shipping Order.

From Sprague & Rhoads Const. Co. T. Canville and Co., Date Oct. 8, 1917.

At Loreto, Texas Street, City, County,

[illegible]

Consigned to The Coca-Cola Company, Trade Div.

Destination San Juan Capistrano, CA Street, Highway 78 City, San Juan Capistrano
County, Orange State, California

Routing ~~From Memphis to Houston / Transit to Inst.~~

Delivering Carrier _____ Vehicle or
Cor Initial _____ No. _____

Collect On Delivery \$ _____ and remit to: _____
 _____ Street _____ City _____ State _____

C. O. D. charge to be paid by	Shipper <input type="checkbox"/> Consignee <input type="checkbox"/>
----------------------------------	--

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*Weight (Subject to Car.)	Class or Rate	Check Col.
1,025	rad's Green Coffee 475 bags 1-540	✓		
	560 7121	✓		
	FROM: MEXICO 250 9023	✓		
	INNET WEIGHT 1225 bags ttl.			
	MAIL COPIES OF THE BILL OF LADING AND INNET			
	COPIES TO THE COCA COLA CO. FOOD DIV. P O BOX 2079,			
	HOUSTON, TEXAS 77001 AIR MAIL TARIFF DEPT.			
	RECEIVED FROM MARKET TRASH			

[illegible]

It charges are to be present with of
standing here, "To be present."

7/7/70 - 11:45 AM

in a copy in preparation of the charges
on the properly described article.

APR 11 1964

(The signature here stands for me and
the company, please.)

Charges Advanced:

NOTE - Where the rate is determined on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding \$_____

~~Shipment - Heavy Item~~ Shipper

2 Per _____

Permanent Address of Shipper: _____ Street, _____ City, _____ State

✓
V. 2500, Box 4523, San Antonio, Tex. 78209 45424-1

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TRANSLATION from Spanish
REF. # 8-19/mr

INSTITUTO MEXICANO DEL CAFE

VS.

THE SPRAGUE & RHODES COMMODITY CORP.
AND MR. ARMANDO GUZMAN VILLANUEVA
ORDINARY COMMERCIAL PROCEEDINGS

TWENTY-EIGHTH CIVIL JUDGE
CITY

I, Héctor Garza Rodríguez, Mexican, married, of legal age, attorney-at-law, according to License No. 176497 issued by the Department of Professions, indicating as domicile to receive all manner of notices the Legal Department of the Instituto Mexicano del Café, located on the 11th floor of the building marked No. 300 on Avenida Paseo de la Reforma in this city, authorizing Counsellors Jorge León Orantes Valles, J. Javier Elizondo Elizondo, Eduardo Ibarra Guajardo, Raúl Chávez Alvarez and Jorge Quintanilla Gómez and Law Clerk Alejandro Jiménez Tinoco.. to act in this case, do respectfully appear before you and warrant:

That in my capacity as general legal representative of the Instituto Mexicano del Café, for lawsuits and collections, as I prove with the certified copy of Public Instrument No. 2,317 of May 2, 1975, executed before Notary Public No. 137 of the Federal District, Lic. Carlos de Par... (Appendix "1"), I hereby formally file suit, in ordinary commercial proceedings, against the firm called The Sprague & Rhodes Commodity Corporation, which is domiciled at 99 Wall Street, New York, N.Y. 10005, and against Mr. Armando Guzmán Villanueva, as agent in this city of said legal entity, who is domiciled in Office

369 Lexington Ave., New York, N. Y. 10017
(212) 867-2370
Suite 503

BERNARD A. LANGSTADT INC.



EXHIBIT E

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301 of the building marked No. 538 on Avenida Homero in Colonia ...lanco in this city, from whom I claim, as jointly liable, discharge of the payment obligation for the purchase and sale of 6,000 bags of washed prime coffee, new crop, American preparation, concluded between the defendant company, through its agent, Mr. Armando Guzmán Villanueva, and the Instituto Mexicano del Café, the former as Buyer and the latter as Seller of said bean, expressed in terms of payment of the following:

- a) On account of principal, the sum of \$606,918.74 (six hundred six thousand nine hundred eighteen and 74/100 American dollars) or the equivalent thereof in national currency at the time payment is effected;
- b) The sum of \$21,243.20 (twenty-one thousand two hundred forty-three and 20/100 American dollars), on account of interests in arrears at the legal rate, computed from the time of default of the payment obligation to this date, as well as payment of interests in arrears that continue to be incurred until full settlement of the debt claimed;
- c) The sum of money resulting from bank charges made to the organization I represent by virtue of the efforts to collect from the defendants, as well as all of the expenses incurred due to breach of the contract by the defendants, a statement for which will be presented in due time;
- d) Payment of damages resulting from breach of the above-mentioned contract of purchase and sale;

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e) Expenses and costs incurred as a result of these proceedings.

I base my suit on the following facts and considerations of law, which I specify hereinbelow.

F A C T S

I. As a preliminary to the facts constituting the grounds for this suit, I must state to Your Honor that the Instituto Mexicano del Café is a public agency of the Federal Government, with its own legal capacity and assets, created by Act of Congress of the Union, published in the Official Gazette of the Federation on December 31, 1958 (Appendix "2"), among the purposes of which are the protection and improvement of the cultivation, processing and trade of Mexican coffee in the country as well as abroad. It therefore engages, among other things, in the purchase and sale of coffee for "domestic consumption" and sale of "export-type coffee."

II. Consequently, on July 22, 1975 Mr. Armando Guzmán Villanueva showed up at the Sales Department of my client, located on the 13th floor of the building marked No. 300 on Avenida Paseo de la Reforma in this city, as agent of the American firm, The Sprague & Rhodes Commodity Corporation, to negotiate the purchase of 3,000 bags of washed prime green coffee, new crop, at the price of \$80.00 (eighty American dollars) per 100 pounds FOB Laredo, Texas, the terms of payment of which were: sight draft, against shipping documents, or telephone transfer to the account and bank to be indicated by my client, payable on delivery of shipping documents, indicating that said transaction would be confirmed with the contract to be sent by

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his principal, in addition to confirmation by telex (said document is attached, marked "No. 3").

I wish to point out to Your Honor that it is internationally established custom and practice for export-type coffee transactions to be negotiated verbally, by telephone, by telegram or by telex, in order to be formalized in some cases on delivery of the respective contracts. However, as a general rule, said documents are sent by the parties after the date of shipment and receipt of the product traded. This is due to the constant change of prices that coffee undergoes on the world market, which means that in these transactions the purchase and sale are consummated with the mere consent of the parties, establishment of the selling price and shipment and receipt of the product traded accordingly, situations which are, moreover, provided for and regulated by our Commercial Code. This is proven by the fact that Article 78 of the aforementioned Code establishes that in commercial agreements each party is obligated in the manner and under the terms in which it appears that he wished to be obligated, without the validity of the commercial act depending on the observance of given formalities or requisites.

III. On July 31, 1975 The Sprague & Rhodes Commodity Corporation, through its Vice President, Mr. Jack Bloon, sent the Instituto Mexicano del Café Telex No. 232951, addressed to the attention of Lic. Agustín Aguilar, Sales Manager, in which it confirmed that Mr. Armando Guzmán Villanueva is the agent of said company in this city and is authorized to make offers in its name. It further

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confirmed the aforementioned purchase and sale transaction, advising that it was sending Contract No. 5437-F to cover the 3,000 bags of coffee at the price of US\$ 80.00 per 100 pounds FOB Laredo, and that the rest of the details of the operation would be given by its agent and/or in the contract (the telex indicated is attached, marked No. "4", along with its official translation to Spanish, marked No. "5"). However, the buyer never sent the seller the contract promised.

IV. Based on the foregoing, my client proceeded to draw up Industrialization and Shipping Order No. EU/5-3164 of July 29, 1975 in order to export 3,000 bags of washed prime green coffee, American preparation, at the price of US\$ 80.00 per 100 pounds FOB Laredo, and ship immediately to customer Sprague & Rhodes, which order was filled with lots 9090, 9091, 9092, 9093, 9094 and 9095, covering 500 bags each (note attached to the order is attached, marked No. "6").

V. On August 12, 1975 Mr. Armando Guzmán Villanueva showed up at the offices of my client, in his capacity as agent of The Sprague & Rhodes Commodity Corporation, to negotiate a new purchase of 3,000 bags of washed prime coffee, new crop, American preparation, at the price of US\$ 79.50 (seventy-nine and 50/100 American dollars) per 100 pounds FOB, Laredo, indicating to the Sales Department his principal's interest in having these 3,000 bags shipped urgently and immediately together with the 3,000 bags of Order EU/5-3164, for which they had already proceeded to send us the contract of this new purchase, together with Contract 5437-F, contracts we have not received to date.

A 15b

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VI. Accordingly, the Instituto Mexicano del Café immediately proceeded to draw up Industrialization and Shipping Order No. EU/5-3168 of August 13, 1975, covering the export sale of 3,000 bags of coffee, new crop, washed prime, American preparation, at the price of US\$ 79.50 per 100 pounds, in order to be shipped immediately and on an urgent basis to customer Sprague & Rhodes, a quantity filled with lots Nos. 548, 549, 7119, 7120, 7121 and 7122, each covering 500 bags (said control form and order are attached, marked No. "7").

VII. The sale of 6,000 bags of coffee mentioned above was exported by the Instituto Mexicano del Café and consigned to Sprague & Rhodes on August 19, 1975, under export declarations Nos. 13096 and 13097, which are attached, marked Nos. "8" and "9".

VIII. On August 20, 1975 Sprague & Rhodes received accordingly, through its Customs Broker, Carrillo & Company, the 6,000 bags of coffee sold by my client to the defendant company, identified by lots Nos. 548, 549, 7119, 7120, 7121, 7122, 9090, 9091, 9092, 9093, 9094 and 9095, for which said Customs Broker sent us Certificate of Arrival No. 3164 which, marked No. "10," is attached hereto, and its official translation into Spanish, also attached and marked No. "11".

IX. On August 22, 1975 Sprague & Rhodes made a payment to my client, through the Irving Trust Company of New York, for the sum of US\$ 120,933.02, in partial settlement for the 6,000 bags of coffee sold, further offering to pay the final balance of same, as proven

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by the credit notice and respective telex which, marked Nos. "12" and "13", are attached hereto.

X. However, the firm sued did not make any remittance again to my client in order to settle the debt outstanding, for which reason, through the Banco Nacional de Comercio Exterior, S.A., and the latter through the Bankers Trust Company, it sent on August 28, 1975 to the defendant company Draft No. 127/75 for the sum of US\$ 606,948.74 (six hundred six thousand nine hundred forty-eight and 74/100 American dollars), accompanied by Invoice No. 0545 of August 28, 1975, a sum covering the rest of the debt for the purchase and sale transaction and corresponding to the amount of principal claimed, marked numbers "14," "15" and "16", said documents being attached hereto.

XI. However, said collection was returned by The Sprague & Rhodes Commodity Corporation, stating that they only dealt with my client, through their agent, Mr. Armando Guzmán Villanueva, the purchase of 1,000 bags, according to Contract No. C-5481, which they had settled with the payment made through the Irving Trust Company on August 22, 1975.

XII. Carrillo & Company, as Customs broker of The Sprague & Rhodes Commodity Corporation, certified on November 28, 1975 having received, processed and cleared through American Customs 6,000 bags of washed prime coffee of 70 kg, sold by the Instituto Mexicano del Café to The Sprague & Rhodes Commodity Corporation of New York, corresponding to Lots 548, 549, 7119, 7120, 7121, 7122, 9090, 9091, 9092, 9093, 9094 and 9095, each lot covering 500 bags, further stating

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that his client paid his expenses and fees for handling, processing and shipping said bags. The documents mentioned are attached, marked Nos. "17, 18, 190, 20, 21, 22 and 23."

XIII. The Sprague & Rhodes Commodity Corporation, on September 26, 1975, through its agent in this city, Mr. Armando Guzmán Villanueva, delivered to my client Check No. 005, drawn on the Union National Bank of Laredo, Texas, to the order of the Instituto Mexicano del Café, for the sum of \$606,948.74 (six hundred six thousand nine hundred forty-eight and 74/100 American dollars), in payment of the debt claimed. However, said check was returned for lack of funds, a photostatic copy certified by Notary Public being attached hereto, marked No. "24."

I WISH TO MAKE IT CLEAR TO YOUR HONOR THAT I SPECIALLY RESERVE THE RIGHT TO FILE IN DUE TIME WITH THE COMPETENT AUTHORITIES CRIMINAL COMPLAINTS WITH A VIEW TO POSSIBLE CRIMINAL PROCEEDINGS ARISING OUT OF THIS TRANSACTION, AS WELL AS CORRESPONDING TO THE FELONY OF DRAWING CHECKS WITHOUT FUNDS.

XIV. It is to be made clear that Mr. Armando Guzmán Villanueva, individually and as agent of the companies called Cafés de la Frontera, S.A. and Compañía Mexicana de Representaciones AGSA, entered into transactions with my client of purchase and sale of coffee for "domestic consumption" and, furthermore, as specified in the body of this petition, entered into transactions of purchase and sale of "export quality coffee" as agent of The Sprague & Rhodes Commodity Corporation. In view of the foregoing and in order to specify the

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debt arising out of the purchase of "coffee for domestic consumption" on February 16, 1976, the Instituto Mexicano del Café concluded with Mr. Armando Guzmán Villanueva an Agreement of Acknowledgment of Indebtedness, Offer of Payment and Acceptance of Joint Liability, which is attached hereto, marked No. "25."

XV. In view of the many efforts made out of court by my client to obtain from the company called The Sprague & Rhodes Commodity Corporation and Mr. Armando Guzmán Villanueva, as agent of said legal entity, payment of the debt claimed, and in view of the impossibility of accomplishing such objective, I am compelled to sue them jointly and severally in the action and in the legal form proposed.

L A W

1. As to the merits of this case, the provisions contained in Articles 1, 2, 3, 13, 14, 75, Section I, 78, 85, 273, 274, 275, 289, 292, 371, 373, 374, 375, 376, 377, 380, 382, 383, 385, 386 and other relevant articles of the Commercial Code in force are applicable, as are Article 1987, 1988, 1995, 2002, 2004, 2062, 2065, 2068, 2072, 2073, 2082, 2104, 2107, 2108, 2109, 2110, 2546, 2547, 2548, 2552, 2560, 2568, 2584 and other relevant articles of the Civil Code of the Federal District, applied throughout the Republic in cases under federal jurisdiction.

2. The procedure is governed by Articles 1049, 1055, Section I, 1056, 1060, 1061, 1063, 1066, 1069, 1073, 1074 and other relevant articles of the Commercial Code in force.

3. The competence of the Court over which you preside to take

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cognizance of this case is provided for by Article 1090, 1091, 1106 and other relevant articles of the Commercial Code, and Article 156, Section IV, of the Code of Civil Procedure for the Federal District, additionally applied to the Commercial Code.

4. The payment of expenses and costs claimed is regulated by Articles 1082 and 1083 of the Commercial Code.

Since The Sprague & Rhodes Commodity Corporation has its domicile at 99 Wall Street, New York, N.Y. 10005, for purposes of summoning said legal entity, I petition Your Honor to address "LETTERS ROGATORY" to the competent judge of New York City, United States of America, for the purpose of exhorting said authority, assisting in the tasks of the Court over which you preside and in the certainty of reciprocity in similar cases, to pass on this petition, summoning the defendant to appear within the term of law to answer, should it have any legal pleas to present. For this purpose, I petition you to authenticate the signatures on the corresponding official communications, in accordance with the procedure established in our laws for sending letters rogatory abroad.

For purposes of conveying this petition and summoning the defendants, it must be taken into account since the documents attached hereto exceed 25 pages, they will have to remain at the Office of the Clerk of the Court over which you preside in order to be examined by the parties, as established in Section III of Article 1061 of the Commercial Code.

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Now and therefore, I RESPECTFULLY PETITION YOUR HONOR:

FIRST. To take cognizance of my having appeared before the Court with this petition, certified copy of power of attorney, exhibits and plain copies, which I am attaching, suing the firm called The Sprague & Rhodes Commodity Corporation and Mr. ARMANDO GUZMAN VILLANUEVA, as jointly and severally liable, for the payments claimed in this petition.

SECOND. To admit this action in the legal proceedings proposed, ordering the defendants summoned, serving subpoenas on them at the domiciles indicated in the record, in the form and in the terms established in the corresponding legal precepts, so that the defendants may appear to answer within the term prescribed by law, should they have any pleas to file.

THIRD. To address Letters Rogatory in duplicate to the following authority: UNITED STATES DISTRICT COURT OF NEW YORK, with domicile in THE UNITED STATES COURTHOUSE, FOLEY SQUARE, NEW YORK, N.Y., UNITED STATES OF NORTH AMERICA, authorizing Counsellor Robert M. Blum, of Silberfeld Danziger & Bangser, to act in the name of plaintiff, which Letters Rogatory should be addressed in the form and in the terms established by Section III of Article 302 of the Federal Code of Civil Procedure, applied in supplementary form to the Commercial Code.

FOURTH. To open these proceedings to evidence in due time, scheduling a date and time for consideration of the evidence produced by the parties.

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FIFTH. At the proper time, to render a decision favorable to the interests of my client, ordering the defendants jointly and severally to make the payments claimed in the body of this petition.

SIXTH. To deem the persons designated in the body of this petition as authorized to act in this case.

Mexico, D.F., March 23, 1976

I PROTEST WHATEVER MIGHT BE NECESSARY

(signature)

HECTOR CANZA RODRIGUEZ, Esq.

Seal:
Twenty-eighth Civil Court

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612 867-2370

E



**BERTRAND
LANGUAGES INC.**

369 Lexington Ave. at 41st Street
New York, N. Y. 10017

TRANSLATION from Spanish
Ref. # 8-19

CERTIFICATE OF ACCURACY

State of New York }
County of New York } S.S.:

This day personally appeared before me Maurice Robine
who after being duly sworn deposes and states:

That (s)he is a translator of the Spanish
and English languages, associated with BERTRAND
LANGUAGES INC., 369 Lexington Avenue, New York,
New York;

that (s)he is thoroughly familiar with these lan-
guages and has carefully made and verified the within
translation from the original document in the Spanish
language; and

that the within translation is a true and correct English
version of such original to the best of his(her) knowledge
and belief.

Sworn to before me
this 4th day of August, 1976.

ARTHUR A. FALEN
NOTARY PUBLIC, State of New York
No. 31-2099325
Qualified in New York County
Commission Expires March 30, 1977

TRANSLATION



INTERPRETING

Complaint brought by Instituto Mexicano del
Cafe against the Sprague & Rhodes Commodity
Corporation and Armando Guzman Villanueva.

A 164

INSTITUTO MEXICANO DEL CAFE

VS.

THE SPRAGUE & RUTTES COMMODITY CORP.
Y SR. ARMANDO GUERRA VILLANUEVA
JUZGO ORDINARIO MERCANTIL

C. JUEZ VIGESIMO OCTAVO DE LO CIVIL
P R E S E N T E .

HECTOR GARZA RODRIGUEZ, Mexicano, casado, mayor de edad, en el legal ejercicio de la Profesión de Abogado, según Cédula No. 176497 expedida por la Dirección General de Profesiones, señalando como domicilio para oír toda clase de notificaciones, la Gerencia Jurídica del Instituto Mexicano del Café, ubicada en el piso 11 del edificio marcado con el No. 300 de la Ave. Pasco de la Reforma de esta Ciudad, autorizando para que intervengan en el presente negocio a los señores LICs. JORGE LEON ORANTES VALLEJO, J. JAVIER ELIZONDO ELIZONDO, EDUARDO IBARRA GUJARDO, RAUL CHAVEZ ALVAREZ, JORGE QUINTANILLA GOMEZ y Pasante en Derecho ALEJANDRO JIMENEZ TINOCO, ante usted respetuosamente comparezco y expongo.

Que en mi carácter de Apoderado General para pleitos y cobranzas del Instituto Mexicano del Café, según lo acredito con el Testimonio de la Escritura Pública No. 2,317 de fecha 2 de Mayo de 1975, pasada ante la Fe del Notario Público No. 137 del Distrito Federal, Sr. Lic. CARLOS DE PABLO (anexo "1"), ocurro por medio del presente escrito a demandar formalmente en la VIA ORDINARIA MERCANTIL, a la Sociedad denominada THE SPRAGUE & RUTTES COMMODITY CORPORATION, quien tiene su domicilio en 99 Wall Street, New York, N.Y. 10005 y al SR. ARMANDO GUERRA VILLANUEVA como Representante en esta Ciudad de dicha persona Moral, quien tiene su domicilio en el Despacho 301 del edificio marcado con el No. 538 de la Ave. Homero en la Colonia Polanco, de ésta Ciudad, de quienes reclamo conjuntamente como responsables solidarios el cumplimiento de la obligación de pago por la compra-venta de 6,000 sacos de café prima lavado, cosecho nueva, preparación americana, celebrada entre la Sociedad demandada, por conducto de su representante SR. ARMANDO GUERRA VILLANUEVA y el INSTITUTO MEXICANO DEL CAFE; la primera como Compradora y el último como Vendedor de dicho grano, lo cual se traduce en el pago de las siguientes prestaciones:

a) Por concepto de Suerte Principal la cantidad de ----- 606,943.74 DLS. (SEISCIENTOS SEIS MIL NOVECIENTOS CUARENTA Y OCHO 74/100-DOLARES AMERICANOS), ó su equivalente en moneda nacional al momento de efectuarse el pago.

A 1165

Hoja No. 2

b) La cantidad de 21,243.20 DLLS. (VEINTIUN MIL DOS CIENTOS CUARENTA Y TRES 20/100 DOLARES AMERICANOS) por concepto de intereses moratorios al tipo legal, computados desde el momento del incumplimiento de la obligación de pago hasta esta fecha; así como el pago de los intereses moratorios que se sigan causando hasta la total liquidación del adeudo que se reclama.

c) La cantidad pecuniaria que resulte de los cargos bancarios hechos al Organismo que represento en virtud de las gestiones de cobro realizadas a los demandados; así como todos los gastos incurridos por el incumplimiento del contrato por parte de los reos, liquidación que será presentada en el momento oportuno.

d) El pago de daños y perjuicios que sean consecuencia del incumplimiento del contrato de compra-venta mencionado.

e) Los gastos y costas que se originen con motivo de la tramitación del presente juicio.

Fundo mi demanda en los siguientes hechos y consideraciones de derecho que a continuación preciso.

H E C H O S

I.- Como antecedentes de los hechos que constituyen el fundamento de esta Demanda, debo consignar a su Señoría que el Instituto Mexicano del Café, es un Organismo Público del Gobierno Federal, con Personalidad Jurídica y Patrimonio propios, creado por Ley del Congreso de la Unión, publicada en el Diario Oficial de la Federación el día 31 de Diciembre de 1958 (anexo "2"), dentro de cuyos fines se encuentra el de defender y mejorar el cultivo, beneficio y comercio del café mexicano, tanto en el país como en el extranjero. Por lo anterior se dedica entre otras cosas a la compra-venta de café " consumo nacional " y venta de " café tipo exportación ".

II.- Como consecuencia de lo anterior, el día 29 de Julio de 1975, el SR. ARMANDO GUZMAN VILLANUEVA se acreditó ante el Departamento de Ventas de mi representado, ubicado en el piso 13º del edificio marcado con el No. 300 de la Ave. Paseo de la Reforma, en ésta Ciudad, como representante de la Sociedad Norteamericana THE SPRAGUE & LEE DES COMMODITY CORPORATION, para concertar la compra de 3,000 sacos de-

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Hoja No. 5

café verde prima lavado, cosecha nueva, al precio de \$ 80.00 DLS. (OCHENTA DOLARES AMERICANOS) por 100 libras, F.O.B. Laredo, Tex. cuyas condiciones de pago fueron : Giro a la vista, contra documentos de embarque, ó transferencia telefónica a la cuenta y banco que indicara mi representante, pagadero contra entrega de documentos de embarque, indicando que dicha operación quedaría confirmada con el contrato que sería enviado por su mandante, además de su confirmación por Telex (se anexa dicha carta marcada con el No. "3").

Informo a su Señoría que es uso y costumbres establecidas internacionalmente, que las transacciones de café tipo exportación sean concertadas en forma verbal, telefónica, telegráfica ó por Telex, para ser formalizadas en algunos casos contra entrega de los contratos respectivos. Sin embargo, por regla general, dichos documentos son remitidos por las partes posteriormente a la fecha de envío y recibo del producto negociado. Lo anterior es consecuencia del constante cambio de precios que el café sufre en el mercado internacional, lo que significa que en estas transacciones la operación de compra-venta queda perfeccionada por el solo consentimiento de las partes, por la fijación del precio de venta y por el envío y recibo de conformidad del producto negociado; situaciones que además se encuentran previstas y reglamentadas por nuestro Código de Comercio. Prueba de lo anterior es que el Artículo 78 del Código anteriormente mencionado, establece que en las convenciones mercantiles, cada uno se obliga en la manera y términos que aparezca que quiso obligarse, sin que la validez del acto comercial dependa de la observancia de formalidades o requisitos determinados.

III.- El día 31 de Julio de 1975, la Sociedad THE SPRAGUE & RHODES COMMODITY CORPORATION, por conducto de su Vicepresidente Sr. JACK BLOOM, envió al Instituto Mexicano del Café, el Telex No. 252951 dirigido a la atención del Sr. Lic. Agustín Aguilar, Gerente de Ventas, en el que confirmó que el Sr. ARMANDO GUZMAN VILLANUEVA es el representante de dicha Sociedad en ésta Ciudad y se encuentra autorizado para pasar ofertas en su nombre. Confirmó además la operación de compra-venta anteriormente mencionada, informando que estaban enviando el contrato No. 5457-F para cubrir los 3,000 sacos de café al precio de 80.00 DLS. por 100 libras, F.O.B., Laredo. Que los demás detalles de operaciones serían dados por su representante y/o en el contrato (se anexa el Telex indicado, marcado con el No. "4" y su traducción oficial al idioma español, marcado con el No. "5"). Sin embargo, la parte compradora nunca remitió a la parte vendedora el contrato prometido.

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Hoja No. 4

IV.- Basados en lo anterior, mi representado procedió a elaborar la Orden de Industrialización y Embarque No. EU/5-3164 de fecha 29 de Julio de 1975 para exportar 3,000 sacos de café verde prima lavado, - preparación americana, al precio de 80.00 DLLS. por 100 libras F.O.B. La Laredo, para embarcar de inmediato al cliente THE SPRAGUE & RHODES, Orden que fué amparada con los lotes 9090, 9091, 9092, 9093, 9094, y 9095, cubriendo 500 sacos cada uno de ellos. (Dicha forma de control y pedidos se anexa marcada con el No. "6").

V.- El día 12 de Agosto de 1975, el Sr. ARMANDO GUZMAN VILLA NUEVA se presentó en las Oficinas de mi representado en su calidad de representante de THE SPRAGUE & RHODES COMMODITY CORPORATION, para concertar una nueva compra por 3,000 sacos de café prima lavado, cosecha nueva, preparación americana al precio de \$ 79.50 DLLS. (SETENTA Y NUEVE 50/100 DOLARES AMERICANOS) por 100 libras F.O.B., Laredo, indicando a la Gerencia de Ventas el interés de su mandante de que estos 3,000 sacos fueran embarcados en forma urgente e inmediata junto con los 3,000 sacos de la Orden EU/5-3164, para lo cual ya habían procedido a enviarnos el contrato de esta nueva compra, junto con el contrato 5457-F, contratos que hasta la fecha no hemos recibido.

VI.- Por lo anterior, el Instituto Mexicano del Café procedió de inmediato a elaborar la Orden de Industrialización y Embarque No. EU/5-3168 de fecha 13 de Agosto de 1975, que ampara la venta de exportación de 3,000 sacos de café cosecha nueva, prima lavado, preparación americana, al precio de 79.50 DLLS. por 100 libras para ser embarcados de inmediato y en forma urgente al cliente THE SPRAGUE & RHODES, cantidad amparada con los lotes Nos. 548, 549, 7119, 7120, 7121 y 7122 cubriendo cada uno de ellos 500 sacos. (Dicha forma de control y pedido se anexa marcada con el No. "7").

VII.- La venta de 6,000 sacos de café anteriormente mencionada fué exportada por el INSTITUTO MEXICANO DEL CAFE y consignada a SPRAGUE & RHODES el día 19 de Agosto de 1975, al amparo de los pedimentos de exportación Nos. 13096 y 13097, los que se anexan marcados con los nos. "8" y "9".

VIII.- El día 20 de Agosto de 1975, fueron recibidos de conformidad por SPRAGUE & RHODES a través de su Agente Aduanal CARRILLO & COMPANY, los 6,000 sacos de café vendidos por mi mandante a la Sociedad demandada, identificados con los lotes Nos. 548, 549, 7119, 7120, 7121, 7122, 9090, 9091, 9092, 9093, 9094 y 9095, motivo por el cual dicho Agente Aduanal nos -

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Hoja No. 5

remitió el Certificado de Arribo No. 3164, el que marcado con el No. "10" se agrega al presente escrito y su traducción oficial al idioma español - se anexa marcado con el No. "11" .

IX.- El día 22 de Agosto de 1975, THE SPRAGUE & RICHES realizó a través del IRVING TRUST COMPANY de New York, un pago a mi mandante por la cantidad de 120,933.02 DLS. como liquidación parcial de los - 6,000 sacos de café vendidos, ofreciendo además pagar el saldo final de - los mismos, según se acredita con el aviso de abono y Telex respectivo, - los que marcados con los nos. "12" y "13" se agregan al presente escrito.

X.- Sin embargo, la empresa demandada no volvió a situar a mi representado remesa alguna con el objeto de liquidar el adeudado pendiente de pago, motivo por el cual a través del BANCO NACIONAL DE COMERCIO EXTERIOR, S.A. y éste a través del BANKERS TRUST COMPANY, envió -- con fecha 28 de Agosto de 1975 a la empresa demandada el Giro No. 127/75- por la cantidad de 606,948.74 DLS. (SEISCIENTOS SEIS MIL NOVECIENTOS - CUARENTA Y OCHO 74/100 DOLARES AMERICANOS), acompañado de la Factura No. 0545 del 28 de Agosto de 1975, suma que ampara el adeudo restante de la - operación de compra-venta y el que corresponde al importe de la Suerte - Principal que se reclama, marcados con los números "14", "15" y "16" se - anexan dichos documentos al presente ocursus.

XI.- Sin embargo, dicha cobranza fué regresada por -- THE SPRAGUE & RICHES COMMODITY CORPORATION manifestando que únicamente - reconocían haber concertado con mi mandante, por conducto de su representante SR. ARMANDO GUZMAN VILLANUEVA, la compra de 1,000 sacos, según contrato No. C-5481, los cuales habían liquidado con el pago hecho a través del IRVING TRUST COMPANY el día 22 de Agosto de 1975.

XII.- CARRILLO & COMPANY, como Agente Aduanal de THE - SPRAGUE & RICHES COMMODITY CORPORATION, el día 28 de Noviembre de 1975 - certificó haber recibido, tramitado y despachado ante la Aduana Americana 6,000 sacos de café prima lavado de 70 Kg. vendidos por el Instituto Mexicano del Café a THE SPRAGUE & RICHES COMMODITY CORPORATION de New --- York correspondiente a los lotes 548, 549, 7119, 7120, 7121, 7122, 9090, 9091, 9092, 9093, 9094 y 9095 amparando 500 sacos cada lote, manifestando además que su cliente le liquidó gastos y honorarios por el manejo, tramitación y envío de los sacos referidos. Se anexan marcados con los núms. "17, 18- 19, 20, 21, 22 y 23 " los documentos a que se hace mención.

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XIII.- THE SPRAGUE & RHODES COMMODITY CORPORATION, con fecha - 26 de Septiembre de 1975, por conducto de su representante en esta Ciudad, Sr. ARMANDO GUZMAN VILLANUEVA, hizo entrega a mi mandante del Cheque No. - 005 librado a cargo del UNION NATIONAL BANK de Laredo, Tex. y a favor del- INSTITUTO MEXICANO DEL CAFE por la cantidad de 606,948.74 DLS. (SEISCIENTOS SEIS MIL NOVECIENTOS CUARENTA Y OCHO 74/100 DOLARES AMERICANOS) como pago del adeudo Reclamado. Sin embargo dicho cheque fué devuelto por falta de fondos, agregándose una copia fotostática certificada por Notario Público, la que marcada con el No. "24" se agrega al presente ocurso.

ACLARO A SU SEÑORIA QUE LAS ACCIONES PENALES QUE PUEDAN DERIVAR SE DE ESTA OPERACION, ASI COMO LA QUE CORRESPONDE AL DELITO DE LIBRAMIENTO- DE CHEQUES SIN FONDOS , LAS RESERVO EN FORMA ESPECIAL PARA FORMULAR EN EL - MOMENTO OPORTUNO Y ANTE LAS AUTORIDADES COMPETENTES LAS DENUNCIAS PENALES - RESPECTIVAS.

XIV.- Cabe la aclaración que el Sr. ARMANDO GUZMAN VILLANUEVA - en lo individual y como representante de las Sociedades denominadas CAFES- DE LA FRONTERA, S.A. y COMPANIA MEXICANA DE REPRESENTACIONES AGSA, celebró- con mi mandante operaciones de compra-venta de café " consumo nacional " y que además, según se ha precisado en el cuerpo de esta demanda, celebró co- mo representante de THE SPRAGUE & RHODES COMMODITY CORPORATION, operaciones de compra-venta de "café calidad exportación". En vista de lo anterior y a- fín de precisar el adeudo derivado de la compra de " café consumo nacional" con fecha 16 de Febrero de 1976, el INSTITUTO MEXICANO DEL CAFE celebró con el SR. ARMANDO GUZMAN VILLANUEVA, un Convenio de Reconocimiento de Adeudo, - Ofrecimiento de Pago y Aceptación de Responsabilidad Solidaria, mismo que - se agrega al presente escrito marcado con el No. "25".

XV.- En virtud de las múltiples gestiones extrajudiciales reali- zadas por mi mandante con la Sociedad denominada THE SPRAGUE & RHODES COM- DITY CORPORATION y con el SR. ARMANDO GUZMAN VILLANUEVA, como representante de dicha persona Moral, para lograr el pago del adeudo que se reclama y an- te la imposibilidad de lograr tal objetivo, me veo obligado a demandarlos - en forma conjunta y solidaria en la Vía y forma legal propuestas.

D E R E C H O

1.- Por cuanto al fondo del presente negocio son aplicables - las disposiciones contenidas en los artículos 1,2,3,13,14,75 Fracc. I, 78, 85,273,274,283,289,292,371,373,374,375,376,377,380,382,383,385,386 y demás relativos del Código de Comercio en vigor; así como los artículos 1987,1988, 1995,2002,2004,2062,2065,2066,2072,2075,2082,2101,2107,2108,2109,2110,2116,

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Hoja No. 7

2547, 2548, 2552, 2560, 2568, 2584 y demás relativos del Código Civil del Distrito Federal, aplicado en toda la República en materia Federal.

2.- Norman el procedimiento lo establecido en los Artículos 1049, 1055 Fracc. I, 1056, 1060, 1061, 1063, 1066, 1069, 1073, 1074 y demás relativos del Código de Comercio en vigor.

3.- La competencia de ese H. Tribunal a su digno cargo para conocer del presente negocio se encuentra prevista en lo establecido por los Artículos 1090, 1091, 1106 y demás relativos del Código de Comercio; 156, Fracc. IV del Código de Procedimientos Civiles para el Distrito Federal, --- aplicado en forma supletoria al Código del Comercio.

4.- El pago de gastos y costas que se reclaman se encuentra reglamentado por los Artículos 1082 y 1083 del Código de Comercio.

En virtud de que la Sociedad THE SPRAGUE & WHEELS COMMODITY CORPORATION tiene su domicilio en el No. 99 de la calle Wall Street, New York, N.Y. 10005 para los efectos de llevar a cabo el emplazamiento de dicha persona moral, solicito de su Señoría tenga a bien dirigir " CARTA ROGATORIA " al C. Juez competente de la Ciudad de New York, Estados Unidos de Norteamérica con el objeto de exhortar a dicha autoridad para que en auxilio de las labores de este H. Tribunal a su digno cargo y seguro de reciprocidad en casos análogos, corra traslado de la presente demanda, emplazando al reo para que comparezca dentro de los términos de Ley a dar contestación a su demanda, si para ello tuviera excepciones legales que hacer valer. Para lo anterior solicito se proceda a la legalización de las firmas de los oficios correspondientes, conforme al procedimiento establecido en nuestras leyes para el envío de exhortos al extranjero.

Para los efectos de correr traslado de la presente demanda y proceder al emplazamiento de los demandados, deberá tomarse en cuenta que en virtud de que los documentos que se anexan al presente recurso exceden de 25 fojas, los mismos deberán permanecer en la Secretaría de ese H. Tribunal a su digno cargo para que se instruyan las partes, según lo establecido en la Fracción III del Artículo 1061 del Código de Comercio.

Por lo anteriormente expuesto y fundado, A USTED C. JUEZ -
ATTENTAMENTE PIDO.

PRIMERO.- Teniente por presentado con el presente escrito, testimonio de poder, anexos y copias simples que acompaño, demandando de la Empresa denominada THE SPRAGUE & WHEELS COMMODITY CORPORATION y del -----

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SR. ARMANDO GUERMAN VILLANUEVA, en forma conjunta y como responsables solidarios, el pago de las prestaciones que se reclaman en el presente recurso.

SEGUNDO.- Admitir la presente demanda en la Vía y forma legal propuestas, ordenando se emplace a los demandados corriéndoles traslado de la demanda en los domicilios señalados en autos, en la forma y términos establecidos en los preceptos legales correspondientes, a fin de que los reos comparezcan a dar contestación a la misma dentro del término de Ley, si para ello tuvieren excepciones legales que hacer valer.

TERCERO.- Dirigir Carta Rogatoria por duplicado a la siguiente autoridad : " UNITED STATES DISTRICT COURT OF NEW YORK " con domicilio en THE UNITED STATES COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. ESTADOS UNIDOS DE NOROAMERICA, autorizando para que intervenga a nombre de la actora al Lic. Robert M. Blum, del Despacho Silberfeld Danzinger & Bangser, la cual deberá ser dirigida en la forma y términos establecidos por la fracción III, del Artículo 302 del Código Federal de Procedimientos Civiles aplicado en forma supletoria al Código de Comercio.

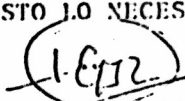
CUARTO.- Abrir el presente juicio a pruebas en el momento oportuno, señalando fecha y hora para el desahogo de las pruebas ofrecidas por las partes.

QUINTO.- En su oportunidad, dictar sentencia favorable a los intereses de mi mandante, condenado solidariamente a los reos al pago de las prestaciones reclamadas en el cuerpo de este recurso.

SEXTO.- Tener por autorizados para que intervengan en el presente negocio a las personas designadas en el proemio de esta Demanda.

México, D. F., a 23 de Marzo de 1976

PROTESTO LO NECESARIO


LIC. HECTOR CÁRDENA RODRÍGUEZ

El p'v.

A172

SPRAGUE & RHODES COMM. CORP. AND
MR. ARMANDO GUZMAN VILLANUEVA
ORDINARY MERCANTILE SUIT
FILE NO. 1382/76
FIRST OFFICE OF COURT CLERK

JUDGE OF THE 28th CIVIL COURT
PRESENT

ARMANDO GUZMAN VILLANUEVA, a Mexican citizen, married,
of age, trader, designating as domicile to hear all kinds of
notifications: Homero number 538, office 301, Colonia Polanco,
Mexico 5, Federal District, in the City of Mexico, and author-
izing Mr. Arturo Velázquez Ceballos to intervene in the present
case, before you respectfully appears and deposes:

By means of this brief and in my own behalf, I appear
to file recourse to the cited claim in the following terms:

F A C T S

I. I neither affirm or deny the facts stated in point
No. 1.

II. I accept the veracity of the correlative point of the
claim, coinciding with the fact that transactions of export
quality coffee are agreed upon orally, by telephone, telegram
or telex, to be formalized in some cases against the delivery
of the respective contracts.

III. What has been stated is true since I was informed by
Instituto Mexicano del Cafe of the remittance of the cited telex
and notified by my principal of the remittance of said document-
ation.

IV. I am not cognizant since it is not a fact undertaken
by me.

V. True, clarifying that the agreed upon contract was by
my principal's instructions.

VI. I am not cognizant since it is not a fact undertaken
by me.

VII. I am not cognizant since it is not a fact undertaken
by me.

EXHIBIT F

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VIII. I am not cognizant since it is not a fact undertaken by me, since said documentation is of an internal nature of Instituto Mexicano del Café and is circulated between the client and purchaser and not through the representative.

IX. I am not cognizant but consider it true considering the balance which Instituto has provided me with.

X. I am not cognizant since it is not a fact undertaken by me.

XI. I am not cognizant since it is not a fact undertaken by me.

XII. I am not cognizant since it is not a fact undertaken by me.

XIII. It is true, clarifying that my principal, in view of sales agreements previously established, committed itself to place sufficient funds to cover the total amount of the check issued, to which reference is made.

XIV. It is true, clarifying that my liability in solidum was accepted as long as and until my principal did not pay the debt which it is obligated to pay in first instance.

XV. That stated in this point is true, clarifying that the undersigned as Sprague & Rhodes Comm. Corp.'s representative not only agreed in its name and representation on the purchase of 6,000 bags of coffee but furthermore, covered by the fact of being its sole representative in Mexico and by its own instructions contracted with Instituto Mexicano del Café the purchase of 3,000 additional bags of coffee, same having being cancelled by the cited Instituto Mexicano del Café in view of the mentioned facts and reasons, the undersigned having had to pay my principal the difference in price from his personal funds, due to the changes in the international market, since the undersigned was imputed the responsibility of the cancellation of the order. The foregoing can be proven in opportune time.

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- 3 -

I wish to add that my principal is the party directly responsible to cover the debit claimed since the cited coffee was received by it notwithstanding the foregoing, the agreed upon commissions still being indebted to the undersigned, wherefore it is not fair that the undersigned should cover the debit claimed from us.

XVI. It is fit to point out that during the last months, efforts have been made to reach an agreement with my principal, to pay Instituto Mexicano del Café the amount stated in its suit, trying to avoid situations and prejudicial problems for both parties.

Up to the filing of this action, I have not received a satisfactory reply in this connection, which has seriously damaged my commercial dealings, with Instituto Mexicano del Café as well as with private parties.

LAW

SOLE POINT.

Payment of the obligations which are claimed being contrary to law as the direct party obligated to such payment is my principal Sprague & Rhodes Comm. Corp., the invoked legal precepts are not applicable.

In view of the foregoing statements, I kindly ask:

FIRST: To consider me as appearing by means of this brief, replying on time and manner to the claim instituted against me by Instituto Mexicano del Café.

SECOND: Continue the present action with all its legal formalities.

THIRD: Dictate the sentence relieving me of payment of the obligations claimed from me.

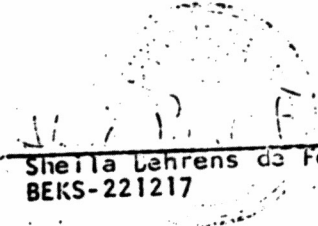
Mexico, Federal District, April 13, 1976

(Illegible signature)
Armando Guzmán Villanueva

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... DE FERNANDEZ, Expert Translator, duly appointed
by the Superior Court of Justice of the Federal District of
Mexico, hereby C E R T I F I E S; That the foregoing is a true
and correct translation to English of the document in Spanish,
to the best of her knowledge and belief.
This certification is issued in Mexico City, Federal District,
on August 3, 1976.


Sheila Lehrens de Fernandez
BEKS-221217

NOTE OF TRANSLATOR:

On each page of the Spanish version of this document there
appears a seal of: the Mexican United States, Superior Court
of Justice of the Federal District, Mexico, as well as numbering
1220295 to 1220297 inclusive.

A17b

BUENA.
JUIICIO ORDINARIO MERCANTIL.
EXP. No. 1382/76.
1era. SECRETARIA.

29

XXVIGESIMO OCTAVO DE LO CIVIL.
SENTE.

ARMANDO GUZMAN VILLANUEVA, mexicano, casado, mayor de edad, comerciante, señalando como domicilio para oír toda clase de notificaciones, las calles de Homero 538, despacho 301, - Col. Polanco, México 5, D.F., en ésta Ciudad de México, autorizando para que intervenga en el presente negocio al Sr. Arturo Velázquez Ceballos; ante usted respetuosamente comparezco y expongo:

Por medio del presente escrito, y por mis propios derechos, ocurro a dar contestación a la demanda citada al rubro, lo cual hago en los siguientes términos:

HECHOS

No 1220297



ORIGINAL SEPTIEMBRE DE JUSTICIA
DEL TRIBUNAL FEDERAL
MEXICO

Ni afirmo, ni niego, los hechos señalados en el punto No. 1º

II.- Acepto la veracidad del punto correlativo de la demanda, coincidiendo en el hecho de que las transacciones de café tipo exportación; son contestadas en forma verbal, telefónica, telegráfica ó por telex, para ser formalizada en algunos casos -- contra entrega de los contratos respectivos.

III.- Es cierto lo manifestado, ya que fui informado por el Instituto Mexicano del Café, del envío del referido telex, y advertido por mi mandante del envío de dicha documentación.

IV.- Lo desconozco por no ser hecho propio.

V.- Cierto, aclarando que el contrato concertado fue por instrucciones de mi mandante.

VI.- Lo desconozco por no ser hecho propio.

VII.- Lo desconozco por no ser hecho propio.

VIII.- Lo desconozco por no ser hecho propio, ya que dicha documentación es de carácter interno del Instituto Mexicano del Café, - y es curada directamente entre cliente y comprador, y no por conducto del representante.

//....

AITT

considero cierto, dado el saldo que el Instituto Mexicano del Café me ha proporcionado.

Lo desconozco por no ser hecho propio.

Lo desconozco por no ser hecho propio.

Lo desconozco por no ser hecho propio.

XIII.- Es cierto, aclarando que mi mandante, en virtud de los convenios de venta previamente establecidos; se comprometió a situarme los fondos suficientes para cubrir el monto total de la cuenta librado, al que se hace referencia.

XIV.- Es cierto, con la aclaración de que mi responsabilidad solidaria fue aceptada en tanto y cuanto mi mandante no cubriera el adeudo al que en primer orden se encuentra obligado a liquidar.

XV.- Es cierto lo manifestado en éste punto, aclarando que el suscrito como representante Sprague & Rhodes Comm. Corp., no sólo concertó en su nombre y representación la compra de 6,000 sacos de café, sino que además, amparado en el hecho de ser su único representante en México, y por sus propias instrucciones contrató ante el Instituto Mexicano del Café, 3,000 sacos de café adicionales, mismos que por los hechos y motivos antes señalados fueron automáticamente cancelados por el ya mencionado Instituto Mexicano del Café, habiéndotenido que cubrir a mi mandante de mi propio peculio la diferencia en precio, motivada por los cambios del mercado internacional, al imputarseme la responsabilidad por la cancelación del pedido. Lo anterior se demostrará en el momento oportuno.

Agrego que mi mandante es el responsable directo de cubrir el pago del adeudo reclamado, ya que dicha café fue recibida por ellos no obstante lo anterior, al suscrito se le adeudan las comisiones pactadas, por lo que es injusto que tenga que pagar por ellos el adeudo que se nos reclama.

XVI.- Cabe señalar, que durante los últimos meses, se ha tratado-

#....

Nº 1220296



TRIBUNAL SUPERIOR DE JUSTICIA
DEL DISTRITO FEDERAL
MEXICO

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del Instituto Mexicano del Café, la cantidad señalada en--
tratando de evitar situaciones y problemas perju--
ciosos para ambas partes.

Hasta la fecha de presentación de éste--
juicio, no he recibido una contestación satisfactoria al respecto,--
lo que ha lesionado seriamente mis tratos comerciales, tanto a ni--
vel del Instituto Mexicano del Café, así como particulares ó priva--
dos.

AL DERECHO

UNICO.-

Siendo improcedente el pago de las pres--
taciones que se me reclaman, ya que el obligado directo a ellos es--
mi mandante Sprague & Rnodes Comm. Corp., los preceptos legales in--
vocados resultan inaplicables.

Por lo anteriormente expuesto, atentamen--

Nº 1220295
te pido:



PRIMERO. Tenerme por presentado con el presente escrito, dando con--
testación en tiempo y forma a la demanda promovida en mi contra por
el Instituto Mexicano del Café.

TRIBUNAL SUPERIOR DE JUSTICIA

DEL DISTRITO FEDERAL

MEXICO

SEGUNDO.- Continuar el presente juicio por sus demás trámites lega--
les.

TERCERO.- Dictar sentencia en la que se me releve del pago de las --
prestaciones que se me reclaman.

Protesto lo necesario,

México, Distrito Federal a trece de abril de mil novecientos seten--
ta y seis.

ARMANDO GUZMAN VILLANUEVA.

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150 DE ABONO

C.V. MON NAL

SR(ES).

910 - 053 41 4 INSTITUTO MEXICANO DEL CAFE
OFICINA CENTRAL

POR LOS SIGUIENTES CONCEPTOS HEMOS ABONADO EN SU CUENTA:

Orden de pago a su favor recibida del Irving Trust
Co. en New York NY., por cuenta del Sprague & Rhodes
Commodity Corp. NY.

DOLARES 120,933.02
AL TIPO DE 12.49

MON NAL

1'510,453.42

mdra

25 AGOSTO 75

5007-DEF EXTRANJERO

AUTORIZACION
ATENTAMENTE
Banco Internacional, S. A.
Instituto de Dinero, Ahorro y Educacion

BANINTERIAL MEX
IRVINGTRST NYK

6/22/75 GM
FROM IRVING TR CO OF NYK
TO BANCO INTERNACIONAL, MEXICO

CREDITING YOU DLRS 120,933.02
FOR ACC. NO 99 053 41 4 INSTITUTO MEXICANO DEL CAFE SUBJECT TO
FINAL PAYMENT
RECEIVED FROM THE SPRAGUE AND RHODES COMMODITY CORP NEW YORK

CFM: 120,933.02 99 053 41 4

FULL STOP

IRVINGBANK

Mje No 424-E

EXHIBIT G

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H

México, D. F., a 23 de Agosto de 1971

INSTITUTO MEXICANO DEL CAFE
Sub-Dirección General
Reforma 300 - Pisos 11, 12 y 13 México 6, D.F.

A
AT

VISTA, SE SERVIRA UD. MANDAR PAGAR A LA ORDEN DE
SIGHT, PLEASE PAY TO THE ORDER OF
-INSTITUTO MEXICANO DEL CAFE-

LA CANTIDAD DE
THE AMOUNT OF

CECIENTOS CERO CINCO DOLARES Y CINCO CENTAVOS
75/100 U.S.c.y.

A
TO

CHASME & SONS
NEW YORK., N.Y.

INSTITUTO MEXICANO DEL CAFE

NUM. 12773 9115.4000.510.74

AVISO DE GIRO
DRAFT ADVICE

SEÑORES
GENTLEMEN:

EN ESTA FECHA, DE ACUERDO CON LA COTIZACION APARECE ARRIBA, HE-
MOS GIRADO EN SU ORDEN DOLARES CINCUENTA Y CINCO CENTAVOS
AS PER THE ABOVE DRAFT IS DRAWDN TODAY AGAINST YOUR
GOODS/ELVES, ON ACCOUNT OF THE FOLLOWING:

Valor de 5,000 Sacos de Cafe Puro Lavado a razón de Dhs. \$39.60 y \$72.50
respectivamente. 5,000 sacos cada precio. El Lavado, Temp. según ordenes
de embarque Nos. 5-5101 y 5-5102.

DOCUMENTOS QUE ACOMPAÑAN EL GIRO ORIGINAL
DOCUMENTS ATTACHED TO ORIGINAL DRAFT:

Junco de Factura No. 995 (Original y tres copias)
Certificado de Arribo No. 3159

ESPERANDO ENCUENTRE NUESTRA LIBRANZA CONFORME NOS SUSCRIBI-
MOS DE UD.
TRUSTING YOU WILL FIND THE ABOVE IN ORDER,
WE REMAIN.

MUY ATOS. Y SS. SS.
VERY TRULY YOURS.

INSTITUTO MEXICANO DEL CAFE

EXHIBIT H

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INSTITUTO MEXICANO DEL CAFE

R.F.C.-IMC-581231

Paseo de la Reforma 300-Pisos 10,11,12 y 13

México 6, D. F.

Tel.: 525-77-16

Telex No. 72-400

Fecha 28 de agosto de 1975

Factura No. 0545

Clave

CLIENTE	OPERACION
(es) SPRAGUE & WOODS	No. Pedido 532 y 534 Fecha 29-VII 6 y 13-VIII-75
Dirección:	Delegación TUNJA GUERRERO Y CORONA
Ubicación y Edo. NEW YORK, N.Y.	No. de Contrato

CONDICIONES DE PAGO
PRESENTACION DE DOCUMENTOS

Certificado de arribo No. 3164 (20-VIII-75

Orden de embarque No. 5-3164 y 3168

UNIDADES	CONCEPTO	DOLARES			MONEDA NACIONAL		
-3,000-	Sacos con 210,000 kilos brutos y 207,000 kilos netos, equivalentes de 450,352.20 libras netas de Café Prima Lavado a razón de Dls. \$90.00 las 100 libras netas FOB, Laredo, Tamps.			\$325,091.75			\$4'559,871.10
-3,000-	Sacos con 210,000 kilos brutos y 207,000 kilos netos, equivalentes de 450,352.20 libras netas de Café Prima Lavado a razón de Dls. \$78.50 las 100 libras netas, FOB, Laredo, Tamps.			\$362,000.00			\$4'521,271.00
	Sub-totales			\$787,091.75			\$9'081,142.10
	MENOS: Su remesa del 25-VIII-75 a través del Banco Internacional, S. A.			120,232.02			1'112,521.42
				\$666,859.73			\$7'968,620.68
	Lotes Nos. 548, 549, 7119, 7120, 7121, 7122, 9020, 9021, 9022, 9023, 9024 y 9025.						
	SOL: SEISCIENTOS SIETE MIL NOVECIENTOS OCHENTA Y OCHO DOLARES 14/100 P.S.C.7						
	EQUIVALENTES DE: SIETE MILLONES QUINIENTOS OCHENTA MIL SEISCIENTOS OCHENTA Y NOVENA PESOS 77/100 M.N.						
	INSTITUTO MEXICANO DEL CAFE						

EXHIBIT I

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AGREEMENT OF ACKNOWLEDGEMENT OF INDEBTEDNESS, OFFER OF PAYMENT AND ACCEPTANCE OF JOINT LIABILITY, ENTERED INTO BY AND BETWEEN THE "INSTITUTO MEXICANO DEL CAFE" AS PARTY OF THE FIRST PART, REPRESENTED HEREIN BY MESSRS. HECTOR GARZA RODRIGUEZ AND ENRIQUE CASTRO CONTRERAS, HEREINAFTER DENOMINATED "CREDITOR", AND AS PARTY OF THE SECOND PART MR. ARMANDO GUZMAN VILLANUEVA, HEREINAFTER DENOMINATED "DEBTOR" ACCORDING TO THE FOLLOWING ANTECEDENTS AND CLAUSES:

ANTECEDENTS:

1. The "CREDITOR" declares through the representatives thereof:
 - a) That they intervene in this instrument in their capacity of Juridical Manager and Accounts Receivable Department Chief, respectively.
 - b) That their Principal is an Agency of the Mexican Federal Government, having legal capacity and proprietary, equity organized by a Law published in the Federal Official Gazette December 31, 1958, having as one of its purposes marketing of "green coffee beans" within the country and abroad.
 - c) That their principal carried out several bargain and sale operations of green coffee beans "national consumption class" with the Debtor and companies represented thereby, granting the above mentioned a payment period which at the moment of maturity and having remained unpaid originated the existence of an indebtedness chargeable to said persons.
 - d) That as a consequence of the above and for the purpose of safeguarding and protecting the equity thereof, their Principal

EXHIBIT J

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was compelled to demand judicial payment of said indebtedness, filing against the "DEBTOR" the following Mercantile Executory Proceedings:

1) Process No. 5914/75, filed before the thirteenth Civil Judge in the City of Mexico, Federal District vs. Mr. Armando Guzmán Villanueva.

2) Process No. 6133/75 filed before the 13th Civil Judge in the City of México, D.F., vs. CIA. MEXICANA DE REPRESENTACIONES AGSA and Armando Guzmán Villanueva.

3) Process No. 6135/75, filed before the Thirteenth Civil Judge in the City of Mexico, D.F. vs CAFES DE LA FRONTERA, S.A. and Armando Guzmán Villanueva.

e) That the defendants effected partial payments regarding the indebtedness referred to and at this date have an unpaid liquid balance demandable and claimed of \$1,263,761.52 (ONE MILLION TWO HUNDRED AND SIXTY THREE THOUSAND SEVEN HUNDRED AND EIGHTY ONE PESOS 52/100 Mex.Cy).

II. The "DEBTOR" declares:

a) That the "DEBTOR" intervenes in this Agreement by its own right and as legal representative of the Companies denominated CAFES DE LA FRONTERA, S.A. and CIA. MEXICANA DE REPRESENTACIONES AGSA.

b) That as a consequence of not complying to the payment of the Bargain and Sale operations of "national consumption class" coffee carried out with the "CREDITOR", they were subject to Mercantile Executory Proceedings, as described in fraction d), Paragraph 1 of this instrument, and having accepted said claims and have effected several partial payments regarding the sums claimed. Furthermore, the "DEBTOR" gave instructions to the "CREDITOR" to apply for the payment the partial payments ef-

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fected before they were sued to their indebtedness as follows:

1. \$1,850,000.00 (ONE MILLION EIGHT HUNDRED FIFTY THOUSAND pesos 00/100 Mex.Cy.) by check No. 209388, issued by Mr. Armando Guzmán Villanueva in favor of INSTITUTO MEXICANO DEL CAFE drawn against Banco de Comercio, S.A., October 14, 1975, according to the receipt No. 2922 issued by the "CREDITOR".

2. \$700,000.00 (SEVEN HUNDRED THOUSAND PESOS 00/100 Mex.Cy.) by check No. 209397, issued by Mr. Armando Guzmán Villanueva in favor of INSTITUTO MEXICANO DEL CAFE drawn against Banco de Comercio, S.A., October 21, 1975, according to receipt No. 2944 issued by the "CREDITOR".

3. \$500,000.00 (FIVE HUNDRED THOUSAND PESOS 00/100 Mex.Cy.) by check No. 209398 issued by Mr. Armando Guzmán Villanueva, in favor of INSTITUTO MEXICANO DEL CAFE, drawn against Banco de Comercio, S.A., October 21, 1975, according to receipt No. 2945 issued by the "CREDITOR".

4. \$1,000,000.00 (ONE MILLION PESOS 00/100 Mex.Cy) by check No. 989002 issued by Mr. Armando Guzmán Villanueva in favor of INSTITUTO MEXICANO DEL CAFE, drawn against Banco de Comercio, S.A. October 27, 1975, according to receipt No. 2970 issued by the "CREDITOR".

c) The DEBTOR equally instructed the CREDITOR to have checks Nos. 209392 and 209396 issued October 15 and 16, 1975, respectively by Mr. Armando Guzmán Villanueva, in favor of INSTITUTO MEXICANO DEL CAFE, drawn against Banco de Comercio, S.A., to be credited to the indebtedness resulting from the purchase of "national consumption class" coffee. Said credit instruments being the legal basis for the Mercantile Executory Proceedings No. 5914/75 referred to hereinabove, since they were returned for lack of funds.

d) The DEBTOR accepts having an indebtedness up to this

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date for the sum of \$1,263,781.52 (ONE MILLION TWO HUNDRED AND SIXTY THREE THOUSAND SEVEN HUNDRED AND EIGHTY ONE PESOS 52/100 Mex.Cy.) for the non compliance of payments derived from the bargain and sale operations of "national consumption class" coffee and agrees to liquidate said sum in the manner and terms set forth herein:

III. The parties hereto agree to mutually recognize the legal capacity under which they have entered the present Agreement, and are willing to comply at all times and places with the rights and obligations set forth herein.

In view of the foregoing the parties hereto agree to the following:

C L A U S E S.

FIRST - The "DEBTOR" hereby recognizes for all legal purposes a debt up to this date to the "CREDITOR" for a total sum of - - - \$1,263,781.52 (ONE MILLION TWO HUNDRED AND SIXTY THREE THOUSAND SEVEN HUNDRED AND EIGHTY ONE PESOS 52/100 PESOS Mex.Cy), as a consequence of the non compliance of the payment of the Bargain and Sale operations of "national consumption class" coffee, sums which cover the claimed legal consequences.

SECOND - The "DEBTOR" hereby agrees to pay the "CREDITOR" the sum set forth in the previous Clause within a non-extendable period maturing March 31, 1976. The interest born on said sum shall be accrued on said payment date.

THIRD - The "DEBTOR" expressly agrees to have the "CREDITOR" hold the Mercantile Executory Proceedings numbers 6133/75 filed before the 13th Civil Judge in the city of Mexico, D.F. vs. CIA. MEXICANA DE REPRESENTACIONES AGSA and Armando Guzmán Villanueva, as well as 6135/75, filed before the 13th Civil Judge in Mexico City, D.F. vs CAFES DE LA FRONTERA, S.A. and Armando Guzmán Villanueva in their present condition, since the mentioned Proce-

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edings show that the assets forming part of the capital stock of the defendants were offered as guaranty of payment referred to in this instrument.

FOURTH - The "CREDITOR" hereby agrees to dismiss the action in damage thereof from the Mercantile Executory Proceedings No 5914/75 filed before the Thirteenth Civil Judge in the City of Mexico, D.F., vs. Mr. Armando Guzmán Villanueva and at this moment delivers to the Defendant the corresponding withdrawal, for the purpose of having said person request the devolution of the credit instruments upon which said claim was based, said instruments being returned with the notation of having been paid, since the payment thereof was applied to cover the debts derived from Bargain and Sale operations of "national consumption class" coffee carried out between the parties.

FIFTH - The "DEBTOR" without affecting the "CREDITOR'S" rights, nor the legal basis for the actions corresponding thereto for the collection of the indebtedness in favor of the American company THE SPRAGUE & RHODES COMMODITY CORP., is established hereby as "Joint Debtor" of said Company and guarantees personally and on behalf of his Principals, CAFES DE LA FRONTERA AND CIA. MEXICANA DE REPRESENTACIONES AGSA, payment of said indebtedness. Said joint liability shall be upheld until SPRAGUE & RHODES pays the totality of the indebtedness to the "CREDITOR" since this indebtedness is the consequence of the bargain and sale operations of 6,000 bags of "exportation class" green coffee beans, which were furthered by Mr. Armando Guzmán Villanueva in his capacity of representative for the Company SPRAGUE & RHODES and said Company has only paid an amount covering 1,000 bags and therefore at this moment has an indebtedness with the "CREDITOR" for a balance of 5,000 bags with a value of \$606,948.74 (SIX HUNDRED AND SIX THOUSAND NINE HUNDRED AND FORTY EIGHT DOLLARS 74/100 US.Cy)

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SIXTH - The "DEBTOR" pursuant to the joint liability agreed to in the previous Clause, expressly agrees having the Mercantile Executory Proceedings Nos. 6133/75 and 6135/75 remain in their present condition, as guaranty of the obligations agreed to: in the understanding that said proceedings shall guarantee in the first place the payment of the indebtedness for "national consumption class" coffee chargeable to the "DEBTOR" and subsidiarily the balance shall cover payment of the "joint liability" derived from the bargain and sale operations of "export class green coffee beans" carried out by SPRAGUE & RHODES with the "CREDITOR".

SEVENTH - The parties hereby agree and covenant to ratify their signatures before a Notary Public and to register the present instrument in the corresponding Public Registry of Property.

EIGHTH - The parties hereto agree that the expenses and legal fees payable as a result of the execution of the present agreement and protocolization thereof, as well as tax stamps, taxes, expenses and fees originating from the registration thereof in the corresponding Public Registry of Property, as well as the cancellation thereof as the case may be, shall be totally paid by the "DEBTOR".

NINTH - The parties hereto agree that all notices, demands for payment, summons or measures related with the present Agreement shall be given at the domiciles set forth hereinafter:

"CREDITOR": Paseo de la Reforma 300, 11th floor

"DEBTOR": Homero 538-301 Polanco, Mexico, D.F.

TENTH - For the interpretation, compliance and execution of present agreement, the parties hereto expressly submit to the jurisdiction of the Court in the city of Mexico, D.F., hereby waiving the venue of any present or future domicile, or for any other cause whatsoever.

After reading the present instrument, the parties hereto

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being fully aware of the legal scope and contents thereof, declare that there is no defect of form which could invalidate the same and set forth their hands February 16, 1976 in the city of México, Federal District.

"THE CREDITOR"

LTC. HECTOR GARZA RODRIGUEZ

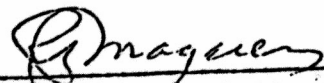
LTC. ENRIQUE CASTRO CONTRERAS

"THE DEBTOR"

SR. ARMANDO GUZMAN VILLANUEVA

ROBERTO GOMEZ MAQUEO, Expert Translator duly appointed by the Superior Court of Justice of the Federal District of Mexico, hereby C E R T I F I E S: That the foregoing is a true and correct translation to English of the original document in Spanish, to the best of his knowledge and belief.

This certification is issued in Mexico City, Federal District, on February 25, 1976.



ROBERTO GOMEZ MAQUEO
GOOR - 180717

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CONVENIO DE RECONOCIMIENTO DE ADEUDO, OFRECIMIENTO DE PAGO Y ACEPTACION DE RESPONSABILIDAD SOLIDARIA QUE CELEBRAN POR UNA PARTE, EL INSTITUTO MEXICANO DEL CAFE, REPRESENTADO EN ESTE ACTO POR LOS LICENCIADOS HECTOR GARZA RODRIGUEZ Y ENRIQUE CASTRO CONTRERAS, A QUIEN EN EL CURSO DE ESTE INSTRUMENTO SE DESIGNARA SIMPLEMENTE " EL ACREEDOR "; Y POR LA OTRA PARTE, EL SR. ARMANDO GUZMAN VILLANUEVA, A QUIEN EN LO SUCESIVO SE DENOMINARA SIMPLEMENTE " EL DEUDOR " MISMO QUE DESEAN FORMALIZAR DE ACUERDO CON EL CONTENIDO DE LOS SIGUIENTES ANTECEDENTES Y CLAUSULAS :

ANTECEDENTES

I.- Declaran los representantes del " ACREEDOR "

- a) Que en este instrumento intervienen en su carácter de Gerente Legal y Jefe del Departamento de Cuentas por Cobrar, respectivamente.
- b) Que su representado es un Organismo Público del Gobierno Federal-Mexicano, con personalidad jurídica y patrimonio propios, creado por Ley publicada en el Diario Oficial de la Federación el día 31 de Diciembre de 1958, siendo uno de sus objetivos la comercialización del Café Verde, dentro y fuera del país.
- c) Que su representado realizó diversas operaciones de compra-venta de café verde " consumo nacional ", con el " DEUDOR " y las empresas que representa, concediéndoseles un término de pago que al in cumplirse ocasionó la existencia de adeudos a cargo de dichas personas.
- d) Que como consecuencia de lo anterior y a fin de salvaguardar y proteger su patrimonio, se vió obligado a exigir el cobro judicial de

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- 2 -

tales adeudos, promoviendo en contra de los deudores, los siguientes Juicios Ejecutivos Mercantiles:

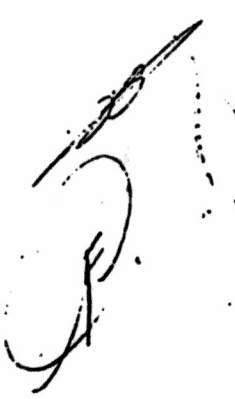
1.- Expediente No. 5914/75 promovido ante el C. Juez Décimo Tercero de lo Civil, de la Ciudad de México, D.F. en contra del Sr. Armando Gúzman Villanueva.

2.- Expediente No. 6133/75, promovido ante el C. Juez Décimo Tercero de lo Civil de la Ciudad de México, D.F. en contra de Compañía Mexicana de Representaciones AGSA y Armando Gúzman Villanueva.

3.- Expediente No. 6135/75, promovido ante el C. Juez Décimo Tercero de lo Civil de la Ciudad de México, D.F. en contra de Cafés de la Frontera, S.A. y Armando Gúzman Villanueva.

- e) Que a los adeudos referidos los demandados realizaron pagos parciales por lo que hasta esta fecha tienen un saldo vencido, líquido, exigible y reclamado de \$1'263,781.52 - UN MILLON DOSCIENTOS SESENTA Y TRES MIL SETECIENTOS OCHENTA Y UN PESOS 52/100 M.N.)

II.- Declara " EL DEUDOR "

- 
- a) Que en este Convenio interviene por su propio derecho y como representante legal de las Sociedades denominadas Cafés de la Frontera, S.A., y Compañía Mexicana de Representaciones AGSA.
- b) Que como consecuencia del incumplimiento del pago de las operaciones de compra-venta de café consumo nacional realizadas con " EL ACREEDOR ", fueron demandados en la Vía Ejecutiva Mercantil, en la forma descrita en el inciso d) de la Declaración I, de este instrumento, habiéndose conformedo -

A191

- 3 -

con dichas demandas y realizando diversos pagos parciales con respecto a las prestaciones reclamadas en las mismas. Que además dieron instrucciones al "ACREEDOR" para que se aplicaran al pago de sus adeudos los pagos parciales que habían realizado antes de ser demandados. siendo estos los siguientes :

1.- \$ 1'850,000.00 (UN MILLON OCHOCIENTOS CINCUENTA MIL PESOS 00/100 M.N.) el día 14 de Octubre de 1975, según recibo No. 2922 expedido por el "ACREEDOR" por concepto de entrega del cheque No. 209388 librado por el Sr. Armando Guzmán Villanueva a favor del Instituto Mexicano del Café y a cargo del Banco de Comercio, S.A.

2.- \$ 700,000.00 (SETECIENTOS MIL PESOS 00/100 -- M.N.) el día 21 de Octubre de 1975, según recibo No. 2944 expedido por el "ACREEDOR" por concepto de entrega de cheque No. 209397 librado por el Sr. Armando Guzmán Villanueva a favor del Instituto Mexicano del Café con cargo al Banco de Comercio, S.A.

3.- \$ 500,000.00 (QUINIENTOS MIL PESOS 00/100 M.N.) el día 21 de Octubre de 1975, según recibo No. 2945 expedido -- por el "ACREEDOR" por concepto de entrega de cheque No. 209398 librado por el Sr. Armando Guzmán Villanueva a favor del Instituto Mexicano del Café, con cargo al Banco de Comercio, S.A.

4.- \$ 1'000,000.00 (UN MILLON DE PESOS 00/100 M.N.) el día 27 de Octubre de 1975, según recibo No. 2970 expedido por "EL ACREEDOR" por concepto de entrega de cheque No. 289002 -- librado por el Sr. Armando Guzmán Villanueva a favor del Instituto Mexicano del Café, con cargo al Banco de Comercio, S.A.

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4

- c) En igual forma dieron instrucciones al "ACREEDOR" de que se acreditara para pago del adeudo por compra de "café -- consumo nacional", los cheques Nos. 209392 y 209396, librados reepsectivamente los días 15 y 16 de Octubre de 1975, por el Sr. Armando Guzmán Villanueva a favor del Instituto Mexicano del Café, con cargo al Banco de Comercio, S.A. que fueron los títulos de crédito que al ser devueltos por insuficiencia de fondos dieron origen al Juicio Ejecutivo Mercantil No. 5914/75 a que se hizo referencia anteriormente.
- d) Que aceptan adeudar hasta esta fecha la suma de \$ ----- (1'263,781.52 -----), por concepto de incumplimientos de pago derivados por operaciones de compra de "café consumo nacional" comprometiéndose a liquidar dicha suma en la forma y términos que se precisan en este instrumento.

III.- Manifiestan ambas partes que se reconocen mutuamente la personalidad con que celebran el presente convenio, estando -- dispuestas a estar y pasar en todo momento y lugar con los derechos y obligaciones consignados.

Con base en lo anterior, éste convenio se regirá de acuerdo con el contenido de las siguientes :

C L A U S U L A S

PRIMERA.- " EL DEUDOR " reconoce en este acto para todos los efectos legales a que haya lugar, adeudar hasta esta fecha " AL ACREEDOR " la suma total de \$ 1'263,781.52 (UN MILLON DOSCIENTOS SESENTA Y -- TRES MIL SETECIENTOS OCHENTA Y UN PESOS 52/100 M.N.).

, como consecuencia de adeudo por incumplimiento de pago en operaciones de compra-venta de café consumo nacional, sumas en las que quedan incluidas las consecuencias legales reclamadas.

SEGUNDA.- " EL DEUDOR " se compromete y obliga en este acto a liquidar " AL ACREEDOR " la suma descrita en la cláusula anterior, en un término inprorrogable que vencerá el día 31 de Marzo de 1976. En la fecha de pago serán cargados los intereses que devengue dicha suma.

TERCERA.- " EL DEUDOR " , a fin de garantizar el pago a que se hace referencia en este instrumento, manifiesta su expresa conformidad para que " EL ACREEDOR " mantenga en el estado en que se encuentran los Juicios Ejecutivos Mercantiles Nos. 6133/75, promovido ante el C. Juez Décimo Tercero de lo Civil de la Ciudad de México, D.F., en contra de Cía. Mexicana de Representaciones AGSA y Armando Guzmán Villanueva, así como el No. 6135/75, promovido ante el C. Juez Décimo Tercero de lo Civil de la Ciudad de México, D.F., en contra de Cafés de la Frontera, S.A. y Armando Guzmán Villanueva, en virtud de que en los procesos mencionados se ofrecieron como garantía de pago los activos que forman parte del capital social de los demandados.

CUARTA.- " EL ACREEDOR " , se obliga en este momento a desistirse en su perjuicio del juicio Ejecutivo Mercantil No. 5914/75 promovido ante el C. Juez Décimo Tercero de lo Civil, de la Ciudad de México, D.F., en contra del Sr. Armando Guzmán Villanueva, por lo que entrega en este acto al demandado el desistimiento respectivo, a fin de que dicha persona proceda a solicitar la devolución de los títulos de crédito que sirvieron de base a dicha demanda, con el fin de que sean devueltos con la anotación de pagos, ya que el pago de sus importes fué aplicado a cubrir adeudos por operaciones de compra-venta de café consumo nacional realizadas entre las partes.

no es cargable to said persons.

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QUINTA.- " EL DEUDOR " sin afectar los derechos del " ACREEDOR " ni desvirtuar la procedencia de las acciones que le corresponden para el cobro de adeudos a favor de la Sociedad norteamericana THE SPRAGUE & RHODES, COMMODITY CORP. se constituye en este acto en "Deudor Solidario " de dicha empresa y garantiza en lo personal y en nombre de sus representadas, CAFES DE LA FRONTERA, S.A. y COMPARIA MEXICANA DE REPRESENTACIONES AGSA, el pago de dichos adeudos. Esta responsabilidad solidaria se obliga a mantenerla hasta en tanto SPRAGUE & RHODES, no liquide en su totalidad los adeudos que tiene con el " ACREEDOR ", ya que los mismos son consecuencia de operaciones de compra-venta de 6,000 sacos de "café verde tipo exportación " que fueron concertados por el Sr. ARMANDO GUZMAN VILLANUEVA en su carácter de Representante de la Sociedad SPRAGUE & RHODES de los cuales ésta última ha pagado únicamente la cantidad de 1,000 sacos por lo que a la fecha adeuda al " ACREEDOR " un saldo de 5,000 sacos con un valor de 606,948.74 dólares (SEISCIENTOS SEIS MIL NOVECIENTOS CUARENTA Y OCHO 74/100 DLLS) .

SEXTA.- " EL DEUDOR ", en virtud de la responsabilidad solidaria -- contraída en la cláusula anterior, dá su expresa conformidad para -- que los Juicios Ejecutivos Mercantiles Nos. 6133/75 y 6135/75, permanezcan en el estado en que se encuentran como garantía de la obligación contraída; en la inteligencia de que primeramente responderán por el pago del adeudo de "consumo nacional" a cargo del "DEUDOR" -- y subsidiariamente responderá su remanente por el pago de la "obligación solidaria" derivada de los adeudos de compra-venta de café verde tipo exportación concertado por SPRAGUE & RHODES con el "ACREEDOR".

SEPTIMA.- Ambas partes se comprometen y obligan en este acto a ratificar sus firmas ante la presencia y fé de un Notario Público; así como a registrar el presente instrumento en el Registro Público de la Propiedad correspondiente.

OCTAVA.- Queda convenido por las partes que los gastos y honorarios que se tengan que pagar con motivo de la celebración del presente -- convenio y su protocolización; así como los timbres, derechos, gastos y honorarios que se originen por su inscripción -----

A195

- 7 -

en el Registro Público de la Propiedad que corresponda y su cancelación en su caso, serán cubiertos íntegramente por " EL DEUDOR ".

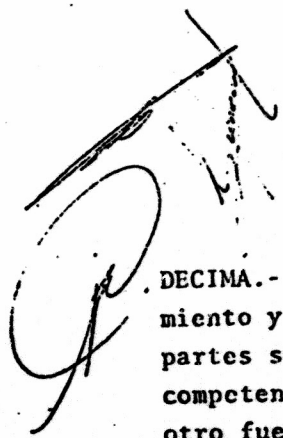
NOVENA.- Queda convenido por las partes que toda notificación, requerimiento, emplazamiento ó gestión relacionada con el presente convenio, deberá ser notificado en los domicilios convencionales que a continuación se mencionan :

" EL ACREEDOR "

Av. Paseo de la Reforma No. 300
Piso 11o.
México 6, D.F.

" EL DEUDOR "

Homero No. 538-301.
Col. Polanco.
México, D.F.



DECIMA.- Para todo lo relacionado con la interpretación, cumplimiento y ejecución de lo establecido en el presente convenio, las partes se someten expresamente a la jurisdicción de los tribunales competentes de la Ciudad de México, D.F., renunciando a cualesquier otro fuero que pudiera corresponderles por razón de domicilio presente ó futuro ó por cualesquier otra causa.

Leído que fué el presente instrumento por las partes contratantes y perfectamente enteradas de su contenido y alcance legal, declarando que no existe vicio alguno del consentimiento que pueda invalidarlo, lo firman de entera conformidad el día dieciséis de fe-

indeb. mess. chargeable to said persons.

A.196

8

brero del año de mil novecientos setenta y seis, en la Ciudad de México, Distrito Federal.

" EL ACREEDOR "

LE 472

LIC. HECTOR GARZA RODRIGUEZ

[Signature]

LIC. ENRIQUE CASTRO CONTRERAS

" EL DEUDOR "

17
SR. ARMANDO GUZMAN VILLANUEVA

A 197

J

UNITED MEXICAN STATES
FEDERAL DISTRICT
CITY OF MEXICO
EMBASSY OF THE UNITED
STATES OF AMERICA

ss:

Before me, Barbara Hemingway Vice, Consul of the United
States of America at Mexico, D. F., Mexico, duly commissioned and
qualified, personally appeared Roberto Gómez Maguero
do, being duly sworn deposes and says as follows:

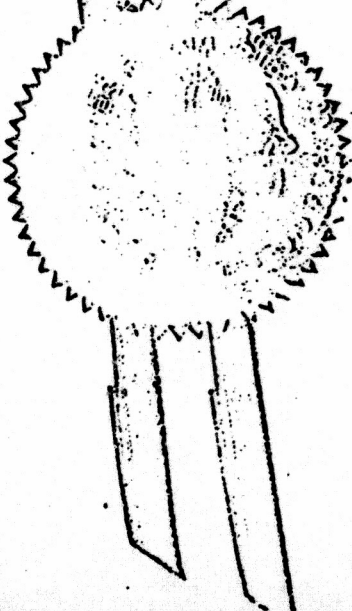
- (1) My name is Roberto Gómez Maguero
and I reside at Roma 31-5
- (2) I have been familiar with the English and Spanish
languages for the past 50 years. I made the annexed
translation from Spanish English. The said
translation is to best of my knowledge and belief a true
and exact translation of the original document.

and other deponent saith not.

[Signature]
and sworn to before me this 25 day of _____
19 76.

the contents of the annexed documents I assume no
liability.

Barbara Hemingway
Vice Consul of the United States
of America



A 198

K

ARMANDO GUZMAN VILLANUEVA
 LINCOLN 7951 8-75
 NUEVO LAREDO, TAMPS. MEXICO LAREDO TEXAS 26
 PAY TO THE ORDER OF Jose L. L. L. Mexicanos \$ 606,948.74
Seiscientos seis mil novecientos cuarenta y ocho pesos 74/100 DOLLARS
 UNION NATIONAL BANK OF LAREDO
 LAREDO, TEXAS
 ⑆1141⑆0032⑆ ⑆34 264 5⑆ ⑆0060694874⑆

INSTITUTO MEXICANO DEL CAFE
 COMPROBANTE DE INGRESO

Nº 2837

Bq. Por 606,948.74

Recibimos de SR. ARMANDO GUZMAN VILLANUEVA

\$606,948.74

SEIS CIENTOS SEIS MIL NOVECIENTOS CUARENTA Y OCHO PESOS 74/100 M.N.

Por concepto de PAGO DE FACT. No. 0545 a favor de SPRAGUE REEDS N.Y. POR VENTA CAFE.

Efectivo

Cheque No. 005

Banco UNION NATIONAL Oficio Bank of Laredo

Otros

México, D. F. a 25 de SEPTIEMBRE de 195

CASA

EXHIBIT K

A 199

TRANSLATION)

EXHIBIT No. I
INSTITUTO MEXICANO DEL CAFE
vs THE SPRAGUE & RHODES COMMODITY
CORPORATION and ARMANDO GUZMAN VILLANUEVA
Ordinary Mercantile.- File 1382/76.
First Office of Court Clerk

JUDGE OF THE 28th CIVIL COURT

JAIME GONZALEZ BENDIKSEN, attorney, with certificate No. 204038
Issued by the General Bureau of Professions, designating as domicile
to receive notices the third floor of building No. 35 located at Paseo
de la Reforma in this City, before you, with due respect, appears and
deposes:

That in the exercise of the right established in Article 1057
of the Code of Commerce, without prejudice of the fact that in this
suit The Sprague & Rhodes Commodity Corporation subsequently appear
to answer the initial complaint of same, I constitute myself as a
"party acting for another without authority" (gestor oficioso) of
The Sprague & Rhodes Commodity Corporation for the sole purpose of
demanding, within the term stipulated by Article 1379 of the foregoing
legal regulation, objection of incompetency by declinatory plea of
jurisdiction.

My pretension is based on the following facts and legal dis-
positions, in addition to those already mentioned:

F A C T S

I. The Sprague & Rhodes Commodity Corporation is a corporation
domiciled at 99 Wall Street, New York, N. Y. 10005, U.S.A., fact
which is evidenced by express statement made in this precise case
by Instituto Mexicano del Cafe in its claim, as well as by having
served notice at defendant's domicile.

II. The action exercised in the present lawsuit is of a typical
personal nature, fact which is evidenced by simple reading of the
founding facts of the suit. Therefore, the competency to try the
lawsuit which is initiated by means of same, corresponds to the
Judge of defendant's domicile.

EXHIBIT L

A 200

- 2 -

exists in the writs of any nature legally capable that The Sprague & Rhodes Commodity Corporation, with power of forum to which it is entitled by virtue of domicile, has expressly and tacitly submitted to the jurisdiction of the Mexican courts.

IV. Being it so and in accordance with stipulations contained in Article 1105 of the cited Code of Commerce, Your Honor does not have the competency to try the case, which is, at plaintiff's elect supplied in favor of the United States District Court for Southern District of New York, with domicile at Foley Square, New York 10007, U.S.A. or in favor of the Supreme Court of the State of New York for the New York County, with domicile at Center Street, New York 10007, U. S.A.

V. Therefore, taking the asserted facts into consideration and based on the legal precepts invoked, by means of this communication and in my capacity as a "party acting for another without authority" (gestor oficioso) for The Sprague & Rhodes Commodity Corporation, I file the indicated objection of incompetency by declinatory plea of jurisdiction, and designate as competent, by virtue of domicile, to try and decide on the action I am instituting, at the election of plaintiff, anyone of the jurisdictional institutions which I have previously cited.

In view of the foregoing statements and based on the cited legal dispositions and furthermore on Articles 1058, 1090, 1096, 1097, 1380 and relative articles of the Code of Commerce,

I ASK YOUR HONOR TO KINDLY:

1. Consider me as appearing by means of this communication and a simple copy thereof for transfer, requesting that I be considered as a "party acting for another without authority" (gestor oficioso) in behalf of The Sprague & Rhodes Commodity Corporation.

A 201

- 3 -

the amount of the bond which I must deposit to guarantee the company in behalf of whom I am acting will ratify the procedure undertaken by me in each and all of its parts.

III. After posting the cited bond, recognize my capacity as a "party acting for another without authority" (gestor oficioso) of The Sprague & Rhodes Commodity Corporation.

IV. With said capacity, consider me as having appeared interposing objection of incompetency by declinatory plea of jurisdiction.

V. With the suspension of the procedure, take the necessary steps in accordance with Article 1379 of the Code of Commerce as concerns the objection.

VI. Opportunely, resolve interlocutorily the incidental question formed with this objection, declaring it to be proper and, consequently, remit these writs to the competent court in the City of New York, U.S.A.

México, D.F., June 3, 1976.

(illegible signature)

Seal of the 28th Civil Court
(Cancelled tax stamp)

No. 1220287

Seal of the United Mexican States

Superior Court of Justice of the Federal District
Mexico

SHEILA BEHRENS DE FERNANDEZ, Expert Translator, duly appointed by the Superior Court of Justice of the Federal District of Mexico, hereby C E R T I F I E S: That the foregoing is a true and correct translation to English of the document in Spanish, to the best of her knowledge and belief.

This certification is issued in Mexico City, Federal District, on July 29, 1976.

J. R. F. C.

A 202

EXHIBIT D-11

Federal District, June 15, 1976

To its file the brief of Jaime González Bendiksen, the statements contained therein being considered as having been made and which will be resolved upon for the effects they may carry once the petitioner complies with that established by Article 51 of the Code of Civil Procedures, that is, grant to the satisfaction of the court bond in the amount of 5,000,000.00 MexCy, amount considered as guaranteeing that which will be judged and sentenced and the indemnization of damages and costs which may originate and once effected he will be considered as "party acting for another without authority" (gestor oficioso) of codefendant, The Sprague & Rhodes Commodity Corporation", and the request contained in his brief will be decided upon. Notify. Decided and signed by the Judge.

(illegible signatures)

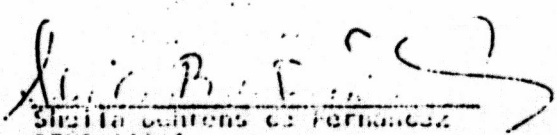
Seal of the 28th Civil Court
(cancelled tax stamp)

No. 1220286

Seal of the United Mexican States
Superior Court of Justice of the Federal District
Mexico

SHEILA BEHRENS DE FERNANDEZ, Expert Translator, duly appointed by the Superior Court of Justice of the Federal District of Mexico, hereby C E R T I F I E S: That the foregoing is a true and correct translation to English of the document in Spanish, to the best of her knowledge and belief.

This certification is issued in Mexico City, Federal District, on July 29, 1976.


Sheila Behrens de Fernandez

A 203

INSTITUTO MEXICANO DEL CAFE
Vs
THE SPRAGUE & RHODES COMMODITY CORPORATION
and ARMANDO GUZMAN VILLANUEVA
ORDINARY MERCANTILE SUIT
FILE No. 1382/76
FIRST OFFICE OF COURT CLERK

EDUARDO IBARRA GUAJARDO, in my capacity of general attorney-in-fact of Instituto Mexicano del Cafe, with authority granted by the latter for lawsuits and collections, capacity which is evidenced by certified copy of public instrument No. 4063 dated May 8, 1976, granted before Mr. Carlos de Pablo, Public Notary No. 137 of the of the Federal District, which I attach herewith, the same authority granted thereunder in behalf of Mr. Héctor Garza Rodríguez not to be considered as revoked, the latter recognized with said capacity in the cited action, appears before you with due respect and deposes:

By writ dated June 15, 1976, dictated in the cited action, Mr. Jaime González Bendiksen was ordered to grant a bond in the sum of 5,000,000.00 MexCy in order that the judicial action instituted by him in behalf of The Sprague & Rhodes Commodity Corporation would render its legal effects.

However, in the cited writ Your Honor failed to determine the term in which the disposition at hand should be complied with.

Article 1079 of the Code of Commerce in force is very clear in stating that when the law does not determine a term for a certain judicial act or for the exercise of some right said term will be considered of three days.

There exists no disposition of a mercantile nature establishing the term within which the bond in question should be granted and therefore, for that kind, the term of three days referred to in paragraph VIII of Article 1079 prevails.

Therefore, in view that said term expired without the "party acting for another without authority" (gestor oficioso) of de-

A 204

- 2 -

The Sprague & Rhodes Commodity Corporation, having
granted the surety bond, I appear to accuse the default in-
curred in by Mr. Jaime González Bendiksen so that the right
he should have opportunely exercised be considered as lost,
on the basis of that stipulated in Article 1078 of the Code of
Commerce in force.

In view of the foregoing statements, I ask Your Honor to
kindly:

I. Consider me as appearing with the capacity I hold,
accusing Mr. Jaime González Bendiksen's default as "party
acting for another without authority" (gestor oficioso) of
defendant, The Sprague & Rhodes Commodity Corporation, in not
having granted the bond required within the term stipulated
by law.

II. Declare the right of the cited person to represent
The Sprague & Rhodes Commodity Corporation as "party acting
for another without authority" (gestor oficioso) as lost and
consequently reject the objection of the cited "party acting
for another without authority" (gestor oficioso) contained in
his brief dated June 3, 1976.

III. Order that the enclosed photostatic copy of power of
attorney attached herewith be certified once it has been checked
with the certified copy of the power of attorney granting author-
ity to the undersigned, returning the latter document to me as
it will be needed for several other legal matters.

Mexico, Federal District, June 22, 1976

(illegible signature)
Eduardo Ibarra Guajardo

Seal of the 28th Civil Court
(Cancelled tax stamp)

No. 122081

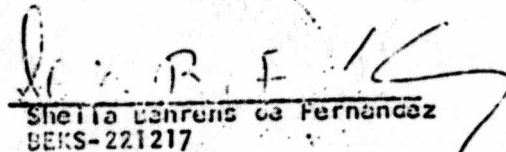
Seal of the United Mexican States
Superior Court of Justice of the Federal District
Mexico

A 205

- 3 -

ENS DE FERNÁNDEZ, Expert Translator, duly appointed
Superior Court of Justice of the Federal District of
Mexico, hereby C E R T I F I E S; That the foregoing is a true
and correct translation to English of the document in Spanish,
to the best of her knowledge and belief.

This certification is issued in Mexico City, Federal District,
on July 29, 1976.


Sheila Lohrens de Fernández
SEKS-221217

A 206

Federal District, July 9, 1976

to its file the brief of Eduardo Ibarra Guajardo and certified copy attached therewith; in the terms of same, Mr. Eduardo Ibarra Guajardo is recognized as attorney-in-fact of Instituto Mexicano del Cafe for all legal effects; the default acknowledged and confirmed in same and in respect to the action of the "party acting for another without authority" (gestor officioso) which Mr. Jaime González Bendiksen instituted in this court to reply to the claim filed against The Sprague & Rhodes Commodity Corporation, in view that the term of three days which he was given to grant the bond expired without his having complied with said requisite, the right of Mr. Jaime González Bendiksen to represent The Sprague & Rhodes Commodity Corporation is considered as lost and the objection contained in his brief dated June 3, 1976, as not accepted. Prepare the required certification, the certified copy cited above remaining in these writs. Notify. Decided and signed by the Judge.

(illegible signatures)

Seal of the 28th Civil Court
(Cancelled to stamp)

No. 1220280

Seal of the United Mexican States

Superior Court of Justice of the Federal District
Mexico

The publication required by law was made in the Judicial Bulletin No. 8 corresponding to July 12, 1976.

On July 13, 1976 at 12:00 noon the notification of the foregoing resolution became effective.

- - - -

The reverse side of this page reads as follows:

A207

Napoleon Enrique Procel y Calderón, First Clerk of Resolutions,
of the 28th Civil Court of this City

C E R T I F I E S:

That this photostatic copy is an exact copy of the original
which is found in File No. 1382/76 relative to the ordinary
mercantile suit instituted by Instituto Mexicano del Cafe
against The Sprague & Rhodes Commodity Corporation and
Armando Guzmán Villanueva, copy which is certified in com-
pliance with that ordered in writ dated July 26, 1976 and
is issued in eight pages duly stamped and sealed and checked
in the City of Mexico, Federal District, on July 29, 1976.

First Clerk of Resolutions


(illegible signature)

Napoleon Enrique Procel y Calderón

Seal of the Superior Court of Justice of the Federal District
28th Civil Court

SHEILA BEHRENS DE FERNANDEZ, Expert Translator, duly appointed
by the Superior Court of Justice of the Federal District of
Mexico hereby C E R T I F I E S: That the foregoing is a true
and correct translation to English of the document in Spanish,
to the best of her knowledge and belief.

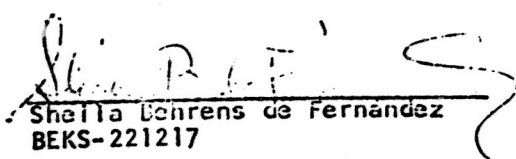
This certification is issued in Mexico City, Federal District,
on July 29, 1976


Sheila Behrens de Fernandez
DEKS-221217

A 208

ATOR:
numbering: 1220280, 1220281, 1220283, 1220286, 1220287, 1220289,

1220291 and 1220294 which has not been placed on the English version since the latter ends differently on all pages. Furthermore, each page of the Spanish documentation contains the seal of the 28th Civil Court, a cancelled stamp and seal of the United Mexican States, Superior Court of Justice of the Federal District.


Shella Benrens de Fernández
BEKS-221217

A 209

THE SPRAGUE & RHODES COMODITY CORPORATION y AR --
FONDO GUSTAVO VILLALBA. --
Ord. Merc.- Exp. # 1382/16.
Primera Secretaría. -----

PH 2 10
50
C. JUEZ VIGESIMO OCTAVO DE LO CIVIL.

JAIME GONZALEZ BENDIKSEN, abogado, con Cédula
#204038 expedida por la H. Dirección General de Profesiones,
señalando como domicilio para recibir notificaciones el dé-
cimo piso del edificio número 35 del Paseo de la Reforma, en
esta ciudad, ante usted, con el debido respeto, comparezco y
expongo:

Que en ejercicio del derecho establecido por el
Nº 1220294 artículo 1057 del código de Comercio y haciendo expresa re-
serva para que con posterioridad en este juicio se apersone
The Sprague & Rhodés Comodity Corporation contestando la de-
manda inicial del mismo, vengo a constituirme en gestor judi-
cial de la propia The Sprague & Rhodés Comodity Corporation
para el solo efecto de promover, dentro del término que seña-
la el artículo 1379 del indicado Ordenamiento legal, excep-
ción de incompetencia por declinatoria de jurisdicción.

Fundo mi pretensión en los siguientes hechos y
disposiciones legales, además de las ya señaladas:

H E C H O S :

1.- The Sprague & Rhodés Comodity Corporation
es una sociedad que tiene su domicilio en 99 Wall Street,
Nueva York, N. Y. 10003, Estados Unidos de Norteamérica. La

A 210

La expresa manifestación que en eso
el Instituto Mexicano del Café en su de-
por haberse corrido su traslado en tal domicilio
la parte demandada.

II.- La acción que se ejercita en el presente
juicio, es de naturaleza típicamente personal, según se demues-
tra con la simple lectura de los hechos fundatorios de la de-
manda. En esa virtud, la competencia para conocer del juicio
que con ella se inicia, corresponde al Juez del domicilio de
la parte demandada.

III.- En autos no existe prueba de ninguna es-
pecie legalmente apta para demostrar que The Sprague & Rhodes
Comodity Corporation, con renuncia del fuero que tiene por
razones de domicilio, se haya sometido expresa o tácitamente
a la jurisdicción de los Tribunales Mexicanos.

IV.- Siendo así y de acuerdo con lo prevenido
por el artículo 1105 del ya mencionado Código de Comercio, pa-
conocer del presente juicio Su Señoría no tiene competencia,
la cual se surte, a elección de la parte actora, en favor de
la United States District Court for Southern District of New
York, con residencia en Foley Square N. Y. 10007, Estados Uni-
dos de Norteamérica, o en favor de la Supreme Court of the State
of New York for New York County, con sede en Center Street,
New York 10007, Estados Unidos de Norteamérica.

V.- Por lo tanto, con arreglo a los razonamien-
tos hechos valer y con apoyo en los preceptos legales que se
dejan invocados, por medio de este escrito y en mi carácter de
gestor judicial de The Sprague & Rhodes Comodity Corporation,

A 211

... la excepción de incompetencia por declinatoria de jurisdicción y señalo como competente, por razones de domicilio, para conocer y decidir el juicio en que estoy promoviendo, a elección de la parte actora, cualquiera de los organismos jurisdiccionales que he citado con anterioridad.

Por lo expuesto, con fundamento en las precisadas disposiciones legales y, además, en los artículos 1058, 1090, 1096, 1097, 1380 y demás relativos del Código de Comercio,

USTED C. JUEZ ATENTAMENTE PIDO SE SIRVA:

I.- Tenerme por presentado con este ocurso y copia simple del mismo para traslado, solicitando se me tenga como gestor judicial de The Sprague & Rhodes Comodity Corpo-

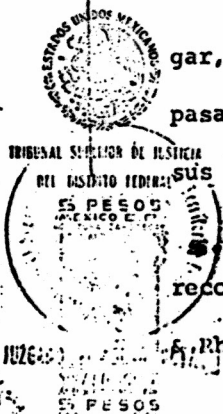
Nº 1220289

II.- Fijar el monto de la fianza que debo otorgar, en garantía que la Empresa por quien gestiono estará y pasará por este trámite, ratificándolo en todas y cada una de sus partes.

III.- Otorgada que sea la fianza de referencia, reconocerme personalidad como gestor judicial de The Sprague & Rhodes Comodity Corporation.

IV.- Con dicho carácter, tenerme por presentado interponiendo la excepción de incompetencia por declinatoria de jurisdicción.

V.- Con suspensión del procedimiento, dar a la propia excepción el trámite que señala el artículo 1379 del Código de Comercio.



A 212

...a quince de junio de mil novecientos...

...sus autos el endrito decuenta, se tienen por hechas
manifestaciones contenidas en el escrito que se acuerda para
los efectos que procedan y una vez que el ocurrente cumpla con lo
establecido por el artículo 51 del Código de Procedimientos Civi
les, en decir, que otorgue a satisfacción de este Juzgado fianza
por la suma de CINCO MILLONES DE PESOS cantidad que segaitima sirve
para garantizarlo que resulte juzgado y sentenciado, la indemniza
ción de los perjuicios y los gastos que se causen, se le tendrá como

5 PESOS

Costa del codemandado The Sprague & Rhodes Commodity Corporation

se proveerá sobre lo solicitado en su escrito. Notifíquese. Lo pro

vocó y firmó el C. Juez. Doyfe. y. Vale

12-11-1976

5 PESOS

VO 1220286



TRIBUNAL SUPERIOR DE JUSTICIA
DEL DISTRITO FEDERAL
MEXICO

En el "Boletín Judicial" núm. 103

señalado al día 16 de Junio de 1976

publicación de la Const.

En 17 de Junio de 1976

a las doce del día surtió sus efectos la notificación del

1976 Const.

A 213

INSTITUTO MEXICANO DEL CAFÉ.
VS.

THE SPRAGUE & RHODES COMMODITY --
CORPORATION Y ARMANDO GUZMAN VILLANUEVA.
JUICIO ORDINARIO MERCANTIL.
EXPEDIENTE No. 1382/76.
1a. SECRETARIA.

C. JUEZ VIGESIMO OCTAVO DE LO CIVIL, DE LA CIUDAD DE
MEXICO, DISTRITO FEDERAL.
P R E S E N T E .

EDUARDO IBARRA GUAJARDO, en mi carácter de Apoderado -
General para pleitos y cobranzas del Instituto Mexicano del Café, perso-
nalidad que acredito con el Testimonio de la Escritura Pública No. 4063
de fecha 8 de mayo de 1976, tirada ante la Fé del Sr. Lic. Carlos de Pa-
blo, Notario Público No. 137 del Distrito Federal, que anexo acompaño, -
sin que se entienda revocado el poder que de la misma clase le fué otor-
gado al Sr. Lic. Héctor Garza Rodríguez, a quien se le reconoció con ese
carácter dentro del juicio anotado al rubro, comparezco ante usted y con
todo respeto expongo:

Por auto de fecha 15 de junio del año en curso, dicta-
do dentro del procedimiento del rubro, se previno al Sr. Lic. Jaime Gon-
zález Bendiksen para que otorgase fianza por la suma de: \$5'000,000.00 --
CINCO MILLONES DE PESOS 00/100 M.N.), a fin de que la gestión judicial
promovida por el propio letrado en representación de la demandada The --
Sprague & Rhodes Commodity Corporation, surtiere todos sus efectos lega-
les.

Sin embargo, en el auto de referencia su Señoría no se
dijo término para el desahogo de la prevención de que se trata.

ORIGINAL SUPERIOR DE JUSTICIA
DEL DISTRITO FEDERAL
MEXICO

El artículo 1079 del Código de Comercio en vigor es --
claro al prescribir que cuando la ley no señala término para la prác-
tica de algún acto judicial o para el ejercicio de algún derecho se ten-
drá por señalado el término de 3 días.

No existe disposición alguna de naturaleza mercantil -
que establezca el término dentro del cual debe otorgarse la garantía de
que se habla; de ahí que, en la especie, debe considerarse como tal el -
de 3 días a que se refiere la Fracción VIII del artículo 1079 citado.

Así pues, y en vista de que dicho plazo ha concluido -
sin que el gestor judicial de la demandada The Sprague & Rhodes Comodi-
ty Corporation, haya exhibido la póliza de la fianza correspondiente, --
vengo a acusar la rebeldía en que el propio Lic. Jaime González Bendik-
sen ha incurrido para el efecto de que se tenga por perdido el derecho -
que el mismo debió haber ejercitado oportunamente, con fundamento en lo
dispuesto por el artículo 1078 del Código de Comercio en vigor.

PLAZA MIRAVALLE 3, 5o. PISO

MEXICO 7, D. F.

TELS. 5-11-76-52 5-33-49-47

mil.

A214

Por lo expuesto a Ud., E. Juez, atentamente pido se --

I.- Tenerme por presentado con el carácter que ostento, usando la rebeldía en que el Lic. Jaime González Bendiksen, como gestor oficioso de la demandada The Sprague & Rhodes Commodity Corporation, incurrido al no haber otorgado la garantía que se le requirió dentro del término de ley.

II.- Declarar por perdido el derecho de la persona indicada para representar a la demandada The Sprague & Rhodes Commodity Corporation, a título de gestor oficioso, y en consecuencia desecher la excepción opuesta por el propio gestor, en su escrito de fecha 3 de junio del año en curso, y

III.- Ordenar se certifique, del Testimonio del Poder - acreditado la personalidad del suscriptor, la copia fotostática que del mismo se acompaña, para que me sea devuelto el primero por necesitarlo para diversos asuntos legales.

PROTESTO LO NECESARIO.

México, D.F. a 22 de Junio de 1976.

LIC. EDUARDO IBARRA GUAYADO.

ESTADO LIBRE Y SOBERANO DE GUAYAMA
JUZGADO DE PRIMERA INSTANCIA
Nº 1220281



TRIBUNAL SUPERIOR DE JUSTICIA
DEL DISTRITO FEDERAL
MEXICO

PLAZA MIRAVALLE 3, 6º. PISO

MEXICO D. F.

TELS. 5-11-76-52 5-33-47-47

mil.

A215

General, a nueve de julio de mil novecientos

A sus autos elevaré lo que, a continuación, se contiene, en los términos del mismo se reconoce al señor BENITO IZQUIERDO GUERRERO su carácter de apoderado del INSTITUTO MEXICANO DE CAFE, para los efectos legales que haga lugar, en su caso, or -
denada la rebeldía que se hiciere en el mismo y respecto de la postulación oficiosa, que el Licenciado Jaime González Benítez promovió en esta Juzgado y a continuación la demanda en contra de THE SPRAGUE & RHODES COMMODITY CORPORATION, en virtud de que el término de tres días que tuvo para otorgar la garantía que se le pidió para garantizar su postulación, no fue otorgada por dicho profesionista; de declarar parte o aldercillo para representar a la demandada The Sprague & Rhodes Commodity Corp al señor Licenciado / JAIMES GONZALEZ BENITEZ y por no oponer a la excepción que éste promovió valor en escrito de fecha tres de junio del año en curso.



TRIBUNAL SUPERIOR DE JUSTICIA
DEL DISTRITO FEDERAL
MEXICO

Hágase la certificación solicitada, quedando en estos autos en la forma del testimonio que se indica arriba. Notifíquese. Lo provayé firmé el C. Juez. Doy fe.

[Handwritten signature]

[Handwritten signature]

En la "Boletín Judicial" núm. 8, con
ante al día 12 de julio de 1976
ubicación de la Comda.
En 13 de julio de 1976
las doce del día, ante los señores la notaría pública
Lic. Branda

A 216

UNITED STATES
DISTRICT
COURT
OF MEXICO
EMBASSY OF THE UNITED
STATES OF AMERICA

ss:

Before me, LANA CHUMLEY, Consul of the United
States of America at Mexico, D. F., Mexico, duly commissioned and
qualified, personally appeared Shida Behrmann
who, being duly sworn, deposed and says as follows:

- (1) My name is Shida Behrmann
and I reside at W. E. 9-11
- (2) I have been familiar with the English and Spanish
languages for the past 50 years. I made the annexed
translation from Spanish to English. The said
translation is to best of my knowledge and belief a true
and exact translation of the original document.

and further deponent saith not.

Shida Behrmann
Subscribed and sworn to before me this 2nd day of August
1971.

For the contents of the annexed documents I assume no

Lana Chumley
Consul of the United States
of America

LANA CHUMLEY
Vice Consul

The action exercised in the present lawsuit is of a typical
personal nature, fact which is evidenced by simple reading of the
found facts of the suit. Therefore, the competency to try the
lawsuit which is initiated by means of same, corresponds to the
Judge of defendant's domicile.

A 217

Certificate of Arrival

No. 3164

The following described shipment cleared United States Customs on AUGUST 20, 1975
by CABRILLO & CO. for account of SPRINGBROOKS COMMODITIES CORP.
(United States Customs Broker) (Importer)

Item or Commodity 6,000 BAGS GREEN COFFEE
(Quantity) (Description)
Lot or other Identification 548-549-7119/22 9090/95

Shipper and or Exporter INSTITUTO MEXICANO DEL CAFE.

Shipment on arrival in the United States was turned over to CABRILLO & CO.
representative of importer.



Remarks:- GILBERT INTERNATIONAL

By Margaret Bliz

EXHIBIT IN

A 218



GILBERT

VERMILION
CONTAINER and TRAILER
Loading, Stacking, Distribution
SILVER STAR INDUSTRIAL BAY
P.O. BOX 1433
LAREDO, TEXAS 77903
PHONE: 512 734400

Certificate of Arrival

CUSTOMER NAME:

ORDER NO.

W/

Bags

DATE
CLEARED

WAYBILL
NO.

TRUCK
NO.

NO. OF
BAGS

LOT
NO.

TRANSPORTATION
LINE

8/20	ALI JADONES	#22	CAJA	350	548	ALI JADONES
8/20	ALI JADONES	#10	CAM.	150	548	ALI JADONES
8/20	ALI JADONES	#23	CAJA	250	7122	ALI JADONES
8/20	ALI JADONES	#12	CAJA	250	7122	ALI JADONES
8/20	ALI JADONES	#13	CAJA	250	7121	ALI JADONES
8/20	ALI JADONES	#24	CAJA	250	7121	ALI JADONES
8/20	ALI JADONES	#20	CAJA	350	7120	ALI JADONES
8/20	ALI JADONES	WP-66	PLACAS	150	7120	ALI JADONES
8/20	ALI JADONES	#1	CAJA	500	7119	ALI JADONES
8/20	ALI JADONES	#19	CAJA	250	549	ALI JADONES
8/20	ALI JADONES	#21	CAJA	250	549	ALI JADONES
8/20	3957	#5	CAM.	500	9090	T.GOLFO Y N.
8/20	3956	#2	CAM.	500	9091	T.GOLFO Y N.
8/20	64980	#63	CAM.	500	9092	F.PREMIER SUR
8/20	64982	#65	CAJA	500	9094	F.PREMIER SUR
8/20	64984	#210	CAJA	500	9095	F.PREMIER SUR
8/20	64978	#66	CAJA	500	9093	F.PREMIER SUR

EXHIBIT N

CLIENT
DESTINATION
PRECEDENCE
REGISTRATION
FACTORY
INSTRUMENT
SIRVASE
Y N
A LA CU
PARA CU
TOTAL
POR
EN EL V
PARA SE
A
CONSERVA

EXHIBIT N

FOLIO: 00538

FORMA DE CONTROL Y PEDIDOS

SIC DIRECCION DE COMERCIALIZACION

GERENCIA DE VENTAS

DIA MES AÑO
29 Julio 1975ORDEN O PEDIDO
00/5-3164

CLIENTE

SERAGUE & RODES

DESTINO

ESTADOS UNIDOS

ADUANA SALIDA

AVO. LARRO, TAMPS.

PLAZO DE EMBARQUE

AGOSTO/75

PRECIO

100.00

50 KGS.

100 LBS. X

TON.

CONDICIONES DE PAGO:

XX

EXPORTACION

CONSUMO NACIONAL

Julio 29/75

CANTIDAD DE SACOS 3.000

TIPO Y MARCA: FRIDA LARRO

PREPARACION: Americana Americana

MARCAR SACOS:

LOTES:

PREPARADO EN LA AGENCIA: AGENCIA ADUANAL INTERMUNICIPAL

FECHA DE EMBARQUE: 12. AGOSTO DE AGOSTO/75

REGISTRO CONTROL EXPORTACIONES No. 21154 FECHA Julio 30/75
FACTURA ADUANAL O No. 02796
PREFACTURASIRVASE SITUAR LA CANTIDAD DE \$ 60.000.00 M.N. SESENTA
Y NOVE MIL PESOS 00/100 N.N.

A LA CUENTA No. DEL BANCO

PARA CUBRIR GASTOS ADUANALES CORRESPONDIENTE A \$ 23.00 POR SACO

TOTAL DE SACOS 3.000 QUE SE EXPORTAN

POR VIA

MARITIMA

XX

TERRESTRE EL DIA VIII-75

EN EL VAPOR

T.E.U.O.

CON DESTINO A:

PARA SER REMITIDO FINALMENTE A: A LA ORDEN PARA NOTIFICAR
A SPRAGUE RODES.

OBSERVACIONES:

DE LA DELEGACION REGIONAL DE Tuxtla Gutierrez, Chiapas
SIRVASE MOVILIZAR LA CANTIDAD DE 3.000 SACOS (TIPO Y
MARCA) DE: FRIDA LARRO
QUE SERAN EXPORTADOS (EMBARCADOS) EL DIA: 12 AGOSTO 1975
EN LA ADUANA AVO. LARRO, TAMPS- AGENCIA ADUANAL INTERMUNICIPAL
A CARGO DEL SR. Ing. Emilio Vela
CON DOMICILIO EN: ADOCUA 3616 NUEVO LARRO TAMPS.

OBSERVACIONES GENERALES:

AGENCIA ADUANAL: FAVOR DE DARLE PRIORIDAD A
ESTE EMBARQUE.

TESORERIA REGIONAL

GERENCIA DE VENTAS

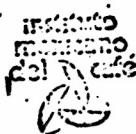
TESORERIA-CUENTAS POR COBRAR

FORMA HRN

A219

FOLIO: 00554

FORMA DE CONTROL Y PEDIDOS



SUB DIRECCION DE COMERCIALIZACION

GERENCIA DE VENTAS

FECHA

DIA 15 MES Agosto AÑO 1975

ORDEN CREDITO LU/5-3105

CLIENTE

SPRAGUE & RHODES

DESTINO

ESTADOS UNIDOS

ADUANA SALIDA

NVO. LAREDO, TAMPS.

AÑO DE EMBARQUE

AGOSTO/75

PRECIO: 70.50

50 KGS.

100 LBS.

TON.

CONDICIONES DE PAGO:

REGISTRO CONTROL EXPORTACIONES No. 31275

FECHA AGOSTO 14/75

FACTURA ADUANAL O No. 03756

PREFACTURA

SIRVASE SITUAR LA CANTIDAD DE S.

M.N.L.

A LA CUENTA No.

DEL BANCO

PARA CUBRIR GASTOS ADUANALES CORRESPONDIENTE A S. POR SACO

TOTAL DE SACOS: 3,000 QUE SE EXPORTAN

POR VIA

MARITIMA

XX,

TERRESTRE EL DIA 15/75

EN EL VAPOR

U.S.A.

CON DESTINO A:

PARA SER REMITIDO FINALMENTE A:

A LA ORDEN PARA NOTIFICAR A SPRAGUE & RHODES.

OBSERVACIONES:

XX

EXPORTACION

CONSUMO NACIONAL

AGOSTO 14/75

CANTIDAD DE SACOS: 3,000

TIPO Y MARCA: PRIMA LAVADO

PREPARACION: KILMAYO AMERICANA

MARCAR SACOS:

LOTES:

PREPARADO EN LA AGENCIA: Cordoba, Ver.

FECHA DE EMBARQUE: inmediato (Agosto)

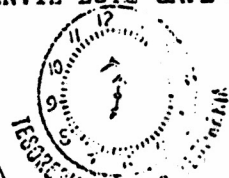
DE LA DELEGACION REGIONAL DE: Cordoba, Ver.

SIRVASE MOVILIZAR LA CANTIDAD DE: 3,000 SACOS (TIPO Y MARCA) DE: PRIMA LAVADO

QUE SERAN EXPORTADOS (EMBARCADOS) EL DIA INMEDIATO (25-VIII-75) EN LA ADUANA NVO. LAREDO, TAMPS. AGENCIA ADUANAL DE INTERCOM A CARGO DEL SR. Ing. Roberto Vela CON DOMICILIO EN: Arlecan # 3610 Nvo. Laredo, Tamps.

OBSERVACIONES GENERALES:

TRAFICO URGE SE ENVIE ESTE CAFE A LAREDO.



GERENCIA DE VENTAS

TESORERIA-CUENTAS POR COBRAR

FORMA HRN

EXHIBIT

A221

AUTORIZACION PARA EXPORTAR CAFE

Nº 3066

EL INSTITUTO MEXICANO DEL CAFE autoriza la exportación del café descrito a continuación:

Número y nombre de exportador: 131.- ANTONIO DOMESTICO LUNA. Aduana: MEXICO LATINO-AMERICANO.

Fecha de la Dirección de Comercio: S. H. y C. P. 1374 del 20 de abril de 1975. Telegrama de la Dirección General de Aduanas: S. H. y C. P.

Clase de Café

☒ Verde☐ Descafeinado verde☐ Tostado☐ Descafeinado tostado☐ Soluble☐ Descafeinado soluble☐ Pergamino☐ Líquido

Cantidad: 1,000 kg (CH NPL)

Valor: \$ 60 M.N.

Observaciones

La aduana recogerá esta autorización si la exportación se hace por el total que ampara.
 Cuando las exportaciones sean por cantidades parciales, la Aduana hará la anotación en este espacio;
 al cumplarse el total, se ampara esta autorización la Aduana la recogerá.

FECHA	CANTIDAD	SALDO	FECHA	CANTIDAD	SALDO

Esta autorización solo podrá utilizarla la persona a cuyo nombre ha sido expedida;

únicamente tendrá validez del 1º DE JULIO AL 30 DE SEPTIEMBRE DE 1975.

México, D. F., a 7 de julio de 1975

INSTITUTO MEXICANO DEL CAFE

EXHIBIT P

A 222

Valid for use in Form O
or replacement until
Válido para importación o
substitución hasta

CERTIFICATE OF ORIGIN
FOR SHIPMENTS TO TRADITIONAL MARKETS
CERTIFICADO DE ORIGEN
PARA EMBALAJES A MERCADOS TRADICIONALES

(Form approved by Inter-American Coffee Organization)
 (Formulario aprobado por la Organización Interamericana del Café)

PART A. FOR USE BY ISSUING COUNTRY ONLY
PARTE A. PARA SER UTILIZADA SOLO POR EL PAIS EMISEDOR

Producing Country / País productor: **MEXICO** Reference Number / No. Referencia: **16** CS: **1676**
 Country / País: **MEXICO** Port / Puerto: **1676**
 Code / Código: **1676** Key / Clave: **1676**
 del país / del país: **1676** Key / Clave: **1676**
 del país / del país: **1676** Key / Clave: **1676**

IT IS HEREBY CERTIFIED THAT THE COFFEE DESCRIBED BELOW WAS GROWN IN THE ABOVE NAMED PRODUCING COUNTRY.
 POR EL PRESENTE SE CERTIFICA QUE EL CAFE DESCRITO A CONTINUACION HA SIDO COSECHADO EN EL PAIS PRODUCTOR ARriba MENCIONADO.

Name of Ship or other Carrier / Nombre del barco u otro medio de transporte: **Camiones** Date of Shipment / Fecha de embarque: **Julio 10 de 1975**
 Port of Embarkation / Puerto de embarque: **El Estero de San Juan, Tlaxcala** Country of Destination / País de destino: **Estados Unidos de Norte America**
 Intermediate Ports / Puertos intermedios: **Directo**

Port or Point of Destination / Puerto o punto de destino: **Directo, New York, N.Y.**

DESCRIPTION OF COFFEE **DESCRIPCION DEL CAFE**
 Green / Verde: **(X)** Roasted / Tostado: Soluble / Soluble: Other / Otro tipo: (Specify) (Especifique)
 (Mark X in appropriate space above) (Insertere arriba una X en el espacio que corresponde)

Shipping Marks or other Identification / Marcas de embarque u otra identificación	Unit of Weight / Unidad de peso	Weight of Shipment / Peso del embarque	Weight of Shipment / Peso del embarque
1,000 bags - Prima Lavado.	Kgs.	70,000.	69,000.
	Lbs.	154,322.	152,117.

Observations:
 Observaciones:

Signature / Firma: **[Signature]**
 Date of Issue / Fecha de expedición: **Julio 10 de 1975**

Authorized Customs Officer / Firma autorizada de la Aduana: **[Signature]**
 Date of Issue / Fecha de expedición: **Julio 10 de 1975**

Complete Instructions regarding the use of this document are contained in document EIB-12-75 as amended.
 Para instrucciones complete acerca de la utilización de este documento, véase el documento EIB-12-75 en su forma actualizada.

INSTITUTO MEXICANO DEL CAFE
 Name of Certifying Agency / Nombre del Organismo Certificante: **[Signature]**

Authorized Customs Officer / Firma autorizada de la Aduana: **[Signature]**
 Date of Issue / Fecha de expedición: **Julio 10 de 1975**

Complete Instructions regarding the use of this document are contained in document EIB-12-75 as amended.
 Para instrucciones complete acerca de la utilización de este documento, véase el documento EIB-12-75 en su forma actualizada.

NOTATION BY CUSTOMS AUTHORITY
DECLARACION DE LAS AUTORIDADES ADUANERAS

Certificate collected and coffee imported or placed under secure customs custody:
 Certificado recogido y café importado o colocado bajo custodia aduanera segura:

At/En: _____

Date/Fecha: _____

Customs Stamp/Sello de la Aduana: _____

NOTATION BY CERTIFYING AGENCY
OTHER THAN CUSTOMS
DECLARACION DEL ORGANISMO CERTIFICANTE QUE NO SEA LA ADUANA

Certificate collected and credited to Transit Stamp Account:
 Certificado recogido y acreditado a la Cuenta de Estampillas de Tránsito:

At/En: _____


Date/Fecha: _____

Name of Certifying Agency / Nombre del Organismo Certificante: _____

Stamp of Certifying Agency / Sello del Organismo Certificante: _____

Authorized Customs Officer / Firma autorizada de la Aduana: _____

A 223

AVISO DE VENTA							
INSTITUTO MEXICANO DEL CAFE <small>AV. EUSEBIO DE LA REFORMA SURESTE, PUEBLOS 11, 12 Y 13 MEXICO D. F.</small>							
Para su inscripción en el Registro de Contratos de Venta de Café, comunico(a)mos a usted(es) que con esta fecha he(mos) celebrado la operación de venta que a continuación se describe: <input checked="" type="checkbox"/> enviaré(mos) copia antes que transcurran 20-días. <input type="checkbox"/> acompaño(a)mos copia.							
Nombre del Importador: SPRINGUE & RICHES COM. CORP.					Agencia de aduana: Nuevo Laredo, Tamps.		
Destino: NEW YORK, N. Y. USA					Plazo de embarque: 30 días		
Clase: <input type="checkbox"/> Altura <input checked="" type="checkbox"/> Prima lavado <input type="checkbox"/> Buen lavado <input type="checkbox"/>							
Precio Dis.: 47.50		<input checked="" type="checkbox"/> Per 100 Lbs.		<input type="checkbox"/> Por quintales 46 lbs.		<input type="checkbox"/> Por 50 lbs.	
Cantidad: 1000		<input checked="" type="checkbox"/> Ceros 02 lbs. netos		<input type="checkbox"/> otros		lbs. netos <input type="checkbox"/>	
Observaciones: <div style="text-align: center; font-size: 1.2em;">Café añejo, cosecha 73/74</div>							
EMBARQUE							
FECHA	CERTIFICADO NO.	CANTIDAD	SALDO	FECHA	CERTIFICADO NO.	CANTIDAD	SALDO
Sello Fielbador y No. de Recepción <div style="text-align: center; font-size: 1.5em;">31005</div> 				MANUEL FERNANDES LARA (Nombre del Exportador) (Firma del Exportador o de su Representante ante el I. M. C.) Fecha de Registro del Contrato de Venta México, D. F., a <u>26</u> de <u>Junio</u> de 197 <u>5</u> No. de Registro <u>1043</u>			

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: SPRAGUE & RHODES COMMODITY CORP., : AFFIDAVIT OF DONALD
: : SPERLING IN SUPPORT
: Petitioner, : OF PETITION AND
: : MOTION
: - against - :
: : 76 CIV. 3128
: INSTITUTO MEXICANO DEL CAFE, : (L.W.P.)
: :
: Respondent. :
: :
-----X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DONALD SPERLING, being duly sworn, deposes and says:

1. I am President of Sprague & Rhodes Commodity Corp. ("Sprague & Rhodes"), have been active in the importation of coffee for the past 29 years, am fully familiar with all of the facts and submit this affidavit in support of the relief requested in the Order to Show Cause issued July 15, 1976.

2. There are numerous misstatements of facts throughout the affidavits of Messrs. Garza and Gonzalez in opposition to petitioner's petition and motion. Since most of those misstatements go to the merits of the dispute I will not seek to rebut them one by one. A few salient examples will demonstrate to the court the obvious misstatements and the true facts justifying the relief requested.

3. Throughout respondent's papers Sprague & Rhodes is characterized as inexperienced in the import of coffee from Mexico having been out of the market from 1971 (our last direct purchase

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from Instituto) until sometime in 1975. This, Instituto explains, is why we are uninformed as to the trade practice in importing from Mexico to Laredo, and the cause of our having been taken in by Guzman. Instituto, on the other hand, supposedly knows everything that is going on in the export field since it exports hundreds of thousands of bags to Green Coffee Association members each year; it dictates minimum sales prices and export quotas to maintain minimum prices; provides a certificate of origin and issues the licenses necessary for each and every bag of coffee exported from Mexico.

4. Sprague & Rhodes is about the 6th or 7th largest importer of green coffee in the United States. Without checking our accounting records, it is fair to estimate that we average importing over 800,000 bags of coffee each year with a sales volume of about 65 to 90 million dollars per year. We are thoroughly familiar with the import-export business and the real responsibilities of an importer. In fact, between 1972 and 1975, we imported over 37,000 bags of coffee from Mexico with a value of over \$3,000,000. In connection with these purchases we executed over 50 Green Coffee Association contracts with about 30 different vendors. Moreover, the documents for each and every transaction bore the Instituto official stamp. Both the stamps and Instituto's close supervision of all export contracts indicate that Instituto was aware of all of these transactions.* Virtually all of this coffee was imported through Laredo, the same as was done with respect to the 6,000 bags here in issue.

*We are prepared to produce all of these contracts should the Court deem it necessary.

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As the written attachments to the contracts in issue all indicate, the terms of payment were "Payment CAD after crossing at Laredo, against documents mentioned in contract." The common understanding of the term and the actual practice was that the importer would pay upon arrival of the coffee in Laredo, after receipt of documents confirming such arrival. That is exactly what Sprague & Rhodes did in this case. Sprague & Rhodes and Instituto can fight for days before this court (or if respondent had its way, before a court in Mexico) over what is the actual and proper trade practice in the payment for coffee. We believe Instituto was negligent in entrusting coffee to Guzman, thereby enabling him to work his swindle, and not requesting payment for weeks later; Instituto believes we were negligent in paying too soon to the wrong parties. Instituto also would impose upon us the unheard of duty of checking on whether our seller has an export license. The result of our fight will be an expenditure by each party of tens of thousands of dollars, a long trial, and perhaps the establishment of the trade practice already known to the arbitrators who serve on the Green Coffee Association panels. Is it any wonder then that Green Coffee Association members, without any exception known to me, always insist on confirming their purchases with Green Coffee Association contracts that require arbitration before that body?

5. Another obvious misstatement, plucked from the air, is the accusation by respondent that somehow we never accounted for \$100,000. Respondent's counsel says we "quietly pocketed more than \$100,000 from Guzman" (Resp. mem. at 9). Mr. Garza,

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again showing intemperate haste, siezes upon this canard to justify his now withdrawn charge of bribery (Garza aff. para 33). He also states that the \$100,000 difference suggests that Sprague & Rhodes may have been playing a confidence game. Respondent explains, based on the sham answer of the duplicitous Guzman, that Sprague & Rhodes got this \$100,000 since Instituto's sales price was \$727,881.76 and Sprague & Rhodes admitted payments of only \$614,525. (Resp. mem. 7). One wonders whether Mr. Garza and his counsel will apologize again once they re-read the contracts in evidence. The contracts pursuant to which Sprague & Rhodes bought 6,000 bags were with Penagos 2,000 bags at 50 1/2¢ a pound (total \$153,638) (Bloom aff., Exh. 7); Instituto, 1,000 bags at 79 1/2¢ a pound (total \$120,933) (Exh. 9) and Frontera 3,000 bags at 78¢ a pound (total \$339,954) Exhs. 10 and 11) - a total of \$614,526. Thus Sprague & Rhodes paid the entire purchase price for all coffee ordered by it. Instituto alleges the sale of 6,000 bags at about 80¢ a pound, thereby accounting for its alleged sales price of \$727,881.76. Had Mr. Garza or his counsel perused the applicable contracts they would have found that Sprague & Rhodes pocketed nothing; a perusal of our payments would show that we promptly paid every dollar we owed in full. How Instituto could suggest a deliberate program to avoid payment by Sprague & Rhodes is simply not understandable. Perhaps Instituto is ignoring all of these plain facts to be sure to find some mud to sling.

6. Next respondent strenuously asserts that Guzman never

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paid respondent any part of petitioner's debt. (Resp. mem. 10; Garza aff. para 32-33). Respondent submitted Exhibit K, copies of Guzman's check for \$606,948.74 and the receipt therefor, and states that the check bounced.* Instituto has not denied receiving hundreds of thousands of dollars from Guzman; it simply relies upon Guzman's answer (Resp. Exh. F) and the agreement between Guzman and Instituto (Resp. Exh. J) dated April 13, 1976 and February 16, 1976, respectively, as evidence that these payments were for Guzman's domestic consumption accounts.** Respondent's contentions are starkly belied by its own documents! Its very own receipt for the \$606,948.74 shows it was to be applied to the Sprague & Rhodes' account. Annexed hereto are a series of further receipts issued by Instituto, all issued in October of 1975,*** which show that Guzman directed and Instituto agreed to credit at least \$244,000 against the alleged Sprague & Rhodes' account. We have in our files copies of additional checks, receipts and correspondence indicating that even more payments were made on account

*The receipt plainly shows that the payment was for Sprague & Rhodes.

**Instituto does not explain why it "insisted that Guzman acknowledged himself to be guarantor to Instituto of Sprague & Rhodes' debt." (Garza aff. para 32). If Guzman was the disclosed agent of Sprague & Rhodes (as Instituto and now Guzman contend) then Guzman can have no liability. If he was not Sprague & Rhodes' agent, then Sprague & Rhodes can have no liability.

***Attached are receipts No. 2922 for 1,850,000 pesos on account of check No. 005 for \$606,948 (the check remitted by Guzman to clear the Sprague & Rhodes' account); No. 2944 for 700,000 pesos "Y/O Sprague & Rhodes" on account of check No. 005, and No. 2945 for 500,000 pesos from Guzman/Sprague & Rhodes on account of check No. 005.

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of Sprague & Rhodes long before Guzman joined forces with Instituto to keep himself out of jail and to get Sprague & Rhodes to pay for his swindle. Upon trial Sprague & Rhodes should be able to determine the circumstances surrounding all of these payments.*

7. It should be noted that at the settlement meeting of November 20, 1975 Mr. Garza fully understood the nature of Sprague & Rhodes' settlement offer. Sprague & Rhodes' position was conveyed by Mrs. Consuela Bustelo of our office who is fluent in Spanish. Mr. Garza asked that our offer be submitted in writing and assisted in the drafting of our letter of November 21, 1975 (Bloom aff., Exh. 13). In addition, he had plenty of time to consider our offer before dispatching his intemperate telex of December 2 (Exh. 14) accusing us of bribery. In these circumstances Mr. Garza's telex sent "perhaps too hastily" and "in anger" must be seen for what it was: a blatant attempt to intimidate Sprague & Rhodes and dissuade it from contesting any claim in Mexico.

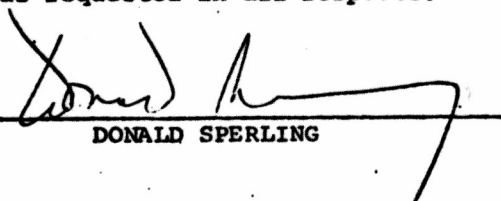
8. Finally it must be repeated that these are but a few of the absolute untruths contained in respondent's papers. Respondent misleads when it claims we had notice that Instituto was the actual seller; dismisses the importance of confirmations by Green Coffee Association contracts; improperly accuses Sprague & Rhodes of speculating in the coffee market; mischaracterizes our immediate payment of \$120,933.02 as being on account;*

*Irving Trust Company confirmed in writing on November 26, 1974 that it erroneously added the words "subject to final payment" and Instituto has been advised of that fact. Paragraphs 27-29 of the Garza affidavit are predicated on nonsense.

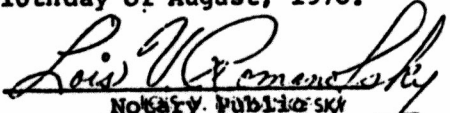
A230

intentionally distorts the circumstances and impact of its threats of criminal prosecution, and misrepresents the extent and legal effect of the appearance by Jaime Gonzalez Bendiksen as gestor officioso. We were advised by Mexican counsel in June of 1976, and that advice recently was reconfirmed, that unless Sprague & Rhodes granted the gestor officioso either authorization to act on our behalf or post a bond, that the mere filing of a petition by Mr. Gonzalez Bendiksen would have no effect whatever under Mexican law; that it would be as though no appearance ever was filed. We never gave any authorization and never posted any bond and accordingly Mr. Gonzalez Bendiksen's petition was dismissed. Mr. Orantes does not deny this in his affidavit; indeed, he appears to confirm these facts. However, rather than stating the legal effect of these facts under Mexican law, Mr. Orantes choses to equate the appearance to a "special appearance" in the United States and argue from there. I have been informed that Dean Garcia Jimeno, who has advised us on Mexican law, is prepared to testify as to Mexican law at any time after August 17, 1976. If this court believes that a material issue of fact has been raised as to the applicable law of Mexico we submit that the fact should be resolved at trial.

WHEREFORE, I respectfully urge this court to grant Sprague & Rhodes the relief it has requested in all respects.


DONALD SPERLING

Sworn to before me this
10th day of August, 1976.


Lois V. Romanofsky
Notary Public State of New York
No. 41-8630245 Queens County

LOIS V. ROMANOFSKY
Notary Public State of New York
No. 41-8630245 Queens County
Comm. Expires March 30, 1978

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INSTITUTO MEXICANO DEL CAFE
COMPROBANTE DE INGRESO

Nº 2922

PAID

Bo. Por 1'850,000.00

Recibimos de SR. ARMANDO GUZMAN VILLANUEVA

\$ 1'850,000.00 (UN MILLON OCHOCIENTOS CINCUENTA MIL PESOS 00/100 N. * * * *)

Por concepto de A cuenta de cheque No. 05 por \$606,948.74 devuelto por Banco Nacional de Comercio Exterior, S.A.

Efectivo Cheque No. 209388 Banco de Comercio S.A. Oficio

Otros

México, D. F. a 14 de octubre de 1975

CASA

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INSTITUTO MEXICANO DEL CAFE
COMPROBANTE DE INGRESO

Nº 2945

m. Bo. Por. 500,000.00

Recibimos de ARMANDO GUZZAN VILLANUEVA / CERRACIN & REODES

\$ 500,000.00 QUINIENTOS MIL PESOS 00/100ML.)

Por concepto de ABONO A CHEQUE DEV. NO. 005

Efectivo Cheque No. 209398 Banco Bancomer Oficio

Otros

México, D. F. a 21 de OCTUBRE de 1975

CASA

A233

INSTITUTO MEXICANO DE CAFE
COMPROBANTE DE INGRESO

Nº 2944

Bo. Por \$700,000.00

Recibimos de ARMANDO GUZMAN VILLANUEVA Y/O SPRACUE & RHODES

\$700,000.00 (SETECIENTOS MIL PESOS 00/100 M.N.)

Por concepto de VENTA DE CAFE ABONO CHEQUE DEVL. 005

Efectivo _____ Cheque No. 209397 Banco S.C.S.A. Oficio _____

Otros _____

México, D. F. a 21 de octubre de 1975

CASA

A 234

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SPRAGUE & RHODES COMMODITY CORP. : 76 CIV. 3128
 : (L.W.P.)
 Petitioner, :
 - against - :
 INSTITUTO MEXICANO DEL CAFE, :
 Respondent. :
-----X

STATE OF NEW YORK ;
 : ss.:
COUNTY OF NEW YORK)

LEONARD S. BAUM, being duly sworn, deposes and says:

1. I am a member of the firm of PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON, counsel to petitioner Sprague & Rhodes Commodity Corp. ("Sprague & Rhodes"), and submit this affidavit specifically with respect to the points of Mexican Law raised in the affidavit of Jorge Leon Orantes (the "Orantes aff.").

2. I am submitting this affidavit because time does not permit us to obtain an affidavit from counsel in Mexico with respect to the applicable Mexican law by August 11, the return date of the Order to Show Cause. The principles of Mexican law set forth herein were relayed to me in a telephone conversation with Guillermo Sepulveda of the Mexico City law firm of Sepulveda which is associated with the law firm of Baker & McKenzie. I have been informed by Mr. Sepulveda that Dean Garcia Jimeno of the free Mexico Law School will be prepared to testify at trial with respect to these points of law at any time after August 17.

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Accordingly, if this court believes that a material fact is in issue with respect to Mexican law, Sprague & Rhodes is fully prepared to resolve that issue at trial.

3. In the Orantes affidavit (¶¶ 8-12) and at several points in respondent's memorandum it is alleged that Sprague & Rhodes made a special appearance through counsel in the Mexican proceeding and that it unsuccessfully challenged the Mexican court's jurisdiction. Instituto relies on a petition filed by Jaime Gonzalez Bendiken, Esq. I am advised that if an attorney wishes to appear specially in Mexico he must first have either a power of attorney or authority from his client, or must post a bond to secure any judgment which the plaintiff may recover against a non-domiciliary defendant. Mr. Orantes concedes this (Orantes aff. ¶ 10). Mr. Orantes also concedes that no bond was posted. The Sperling affidavit establishes that no power of attorney or authority was given to Mr. Gonzalez Bendiksen. (Sperling aff. ¶ 8). I have been told by Mr. Sepulveda that because, under Mexican law, Sprague & Rhodes neither authorized Mr. Gonzalez Bendiksen to appear nor posted a bond, the filing by Mr. Gonzalez Bendiksen of a petition (Resp. Exh. I) is a nullity; it is as though no petition ever was filed at all*. In fact, both authority and the bond were withheld by Sprague & Rhodes for the specific purpose of avoiding an appearance in Mexico which later could prejudice its legal defense in the United States. The above facts establish that Sprague & Rhodes has not availed itself of any right under Mexican law to challenge jurisdiction or stay the proceeding on the basis of an arbitration agreement.

*Article 51 of the Code of Civil Procedures and Article 1058 of the Code of Commerce.

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4. Guillermo Sepulveda also confirmed to me that there is no jurisdiction over Sprague & Rhodes in Mexico because a commercial lawsuit against a debtor must be brought at the place of the debtor's domicile. In this case, the domicile of Sprague & Rhodes is New York. Instituto should not be permitted to obtain jurisdiction over Sprague & Rhodes simply by joining Guzman, a Mexican domiciliary, as defendant. Such joinder is improper because if Guzman was simply Sprague & Rhodes' agent, then he has no liability to Instituto. On the other hand, if Guzman was not Sprague & Rhodes' agent, then Sprague & Rhodes has no liability based upon any act of Guzman. Either Guzman or Sprague & Rhodes is the proper defendant. In either case there is no basis for jurisdiction against Sprague & Rhodes in Mexico.

5. Guillermo Sepulveda also confirmed that under the Mexican Civil Code a party to a civil proceeding can ask the court to prevent a principal of the defendant from leaving the country unless the defendant leaves with its attorney sufficient monies to cover any judgment that might issue.* Here Instituto could ask the Mexican court to prevent an officer of Sprague & Rhodes from leaving Mexico unless and until it left at least \$625,000 with its attorney in Mexico. Although Mr. Orantes knew of no such instance where this was required, Mr. Sepulveda readily supplied an example where a lawsuit had been commenced in connection with a bankruptcy of a hotel in Acapulco. The managing agent of the hotel was not permitted to leave the country until suffi-

*Article 1175 of the Code of Commerce in Mexico.

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cient monies were produced to secure the judgment sought in the lawsuit.

6. In addition, Guillermo Sepulveda stated that under Mexican law a debtor can designate the account against which his payments should be credited, that Guzman effectively had credited numerous payments to the account of Sprague & Rhodes and that Instituto and Guzman cannot now characterize those prior payments as payments against Guzman's domestic consumption account.

7. Finally, Mr. Sepulveda confirmed that if a Mexican trial court makes an initial determination that there is jurisdiction over a non-domiciliary, the case must proceed on the merits even though the non-domiciliary may seek to appeal the decision on jurisdiction. In other words, a real "special appearance" as it is known in this country is not possible.

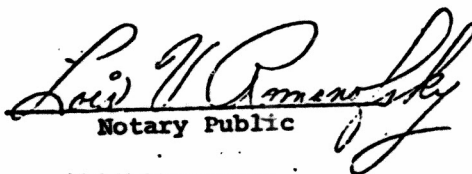
In short, it is plain that the statements in the Jack Bloom affidavit are well supported as to the impediments to litigating in Mexico.

WHEREFORE it is respectfully requested that this court grant the relief requested by Sprague & Rhodes in all respects.

*Article 2092 of the Civil Code.


LEONARD S. BAUM

Sworn to before me this
11th day of August, 1976.


Notary Public

LOIS V. ROMANOFSKY
Notary Public State of New York
No. 41-8630245 Queens County
Comm. Expires March 30, 1978

A238

76 Civ. 3128, SPRAGUE & RHODES COMMODITY CORP. -v- INSTITUTO
MEXICANO DEL CAFE

ENDORSEMENT ORDER

By the attached Order to Show Cause, petitioner Sprague & Rhodes Commodity Corp. seeks an order pursuant to 9 U.S.C. § 4 directing the parties to arbitration and an order pursuant to Rule 60(b) Fed.R.Civ.P. vacating the grant of Letters Rogatory made by Chief Judge Edelstein on April 26, 1976. Having heard the parties and having considered the matter, the Court determines that the petition should be denied in all respects.

The petitioner has made no showing that the Letters Rogatory were issued in violation of 28 U.S.C. § 1696. No grounds properly cognizable under Rule 60 Fed.R.Civ.P. have been advanced such as would justify the vacating of a discretionary order of another Judge of this Court. The cases cited by the petitioner in support of this application are both outdated--since they were decided well before the passage of Section 1696--and irrelevant--since they deal with the issuance of letters to enforce a judgment, not merely to effect service of process, as is the case here. Finally, the Court concludes that this application is in effect an indirect attempt to prevent respondent, a Mexican corporation and an arm of the Mexican state, from proceeding with an action in the courts of its own nation.

On the merits of the application for an order directing arbitration, the Court concludes that petitioner has failed to carry its threshold burden of demonstrating the existence of a written agreement between the parties which contains an arbitration provision. This is an essential requirement which is lacking even in petitioner's offer of proof. See Fisser v. International Bank, 282 F.2d 231, 233 (2d Cir. 1960) (written agreement the "sine qua non" of an enforceable arbitration agreement). In fact, in its petition, Sprague & Rhodes has even denied the existence of an agreement.

"S&R denies that such an agreement was entered into but admits that the alleged agreement contains the . . . clause providing for arbitration"

Further, petitioner has failed to produce any evidence that the alleged arbitration agreement was delivered

A.239

76 Civ. 3128 (cont.)

to, received by, or executed by, the respondent. Respondent has denied delivery and receipt and it has denied execution. In these circumstances, no agreement to arbitrate is present. See Medical Development Corp. v. Industrial Molding Corp., 479 F.2d 345, 349 (7th Cir. 1973). The absence of a delivered writing also precludes petitioner from relying upon N.Y. U.C.C. § 2-207. Similarly, the absence of a writing and the lack of a current course of dealings between the parties precludes any reliance upon U.C.C. § 1-205 and § 2-207(3).

Accordingly, the Court concludes that petitioner has failed to make the required threshold showing that an arbitration agreement exists between the parties. See Ocean Industries, Inc. v. Soros Associates International, Inc., 328 F. Supp. 944, 947 (S.D.N.Y. 1971) (insufficient showing to proceed with a hearing on the issue of the making of an arbitration agreement); see also Almacenes Fernandez S.A. v. Golodetz, 148 F.2d 625 (2d Cir. 1945).

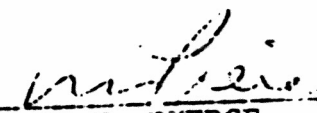
Finally, the Court does not overlook the fact that this controversy is presently before the Superior Court of the Federal District of Mexico. The underlying dispute is in Mexico. The papers and the correspondence, to a great extent, are in Spanish. Respondent is there, as well as petitioner's agent Guzman and the two other coffee exporters involved. The coffee was shipped from Mexico, and payment was made in Mexico. Only petitioner is truly present in New York. Thus, the Court is of the view that a resolution of this matter in that nation would be much more likely to afford the most complete relief to all parties involved. The contacts with this forum are at best minimal. Petitioner's fearful claims concerning the adverse consequences which may befall it if issue is joined in Mexico are unsupported and unpersuasive, and as mere bald assertions, do a disservice to the judicial processes of a sister nation. Upon such a speculative basis, this Court will not engage in any such conjecture concerning the future course of legal proceedings in Mexico. Nor is such speculation grounds for the extraordinary relief sought by petitioner in its application to vacate the order granting Letters Rogatory. If petitioner's position concerning the absence of a contract is as meritorious as it claims, it can present all its arguments to the Mexican court.

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76 Civ. 3128 (cont.)

For the foregoing reasons, the petition for an order pursuant to 9 U.S.C. § 4 and for an order pursuant to Rule 60(b) Fed.R.Civ.P. is in all respects denied.

SO ORDERED.



LAWRENCE W. PIERCE
U. S. D. J.

Dated: New York, N.Y.
August 16, 1976

A 241.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

SPRAGUE & RHODES COMMODITY CORP.,	:	76 Civ. 3128 (LWP)
Petitioner,	:	
-against-	:	<u>NOTICE OF APPEAL</u>
INSTITUTO MEXICANO DEL CAFE,	:	
Respondent.	:	

----- x

S I R S :

Notice is hereby given that the petitioner SPRAGUE & RHODES COMMODITY CORP. hereby appeals to the United States Court of Appeals for the Second Circuit from each and every part of the Endorsement Order entered in the above action by the Honorable Lawrence W. Pierce, United States District Judge, on August 17, 1976.

The jurisdiction of this Court to hear the instant appeal is based on the provision of 28 U.S.C. §§1291 and 1292(a)(1).

Dated: New York, New York
August 20, 1976

Yours, etc.,

PHILLIPS, NIZER, BENJAMIN, KRIM
& BALLON
Attorneys for Petitioner, Sprague
& Rhodes Commodity Corp.

By

A Member of the Firm
Office & P.O. Address:
40 West 57th Street
New York, New York 10019
Tel. No. 977-9700

A 242

TO:

CLERK, UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SILBERFELD, DANZIGER & BANGSER
Attorneys for Respondent,
Instituto Mexicano Del Cafe
230 Park Avenue
New York, New York 10017

Service of 1 copy copies of the
within Appendix is hereby
admitted this 31st day of

August 19 77

Signed Silberfeld, Darniger & Bangser By
July A. Bluestein

Attorney for Respondent-Appellee